SUPREME COURT OF THE UNITED STATES.

9 orig.

OCTOBER TERM, A. D. 1905

THE STATE OF WASHINGTON,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation; GREAT NORTHERN RAILWAY COMPANY, a Corporation, and NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendants.

BILL OF COMPLAINT.

W. B. STRATTON,
Attorney General,
Solicitor for Complainant.

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TO THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA. 2

Your Oratrix, the State of Washington, Complainant, by W. B. Stratton, Attorney General, brings this its bill of complaint against the Northern Securities Company, a Corporation, the Great Northern Railway Company, a Corporation, and the Northern Pacific Railway Company, a Corporation, and alleges:

I.

That by an Act of Congress entitled "An act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," approved February 22nd, 1889, the said State of Washington was admitted into the Union 3 upon an equal footing with the original states.

II.

That said Northern Securities Company is a corporation organized as hereinafter alleged, under and by virtue of the laws of the State of New Jersey, and is a citizen thereof.

That the Great Northern Railway Company is a corporation

duly organized and existing as hereinafter alleged, under and by virtue of the laws of the State of Minnesota, and is a citizen thereof.

That the Northern Pacific Railway Company is a corporation organized and existing as hereinafter alleged, under and by virtue of the laws of the State of Wisconsin, and is a citizen thereof.

4

III.

A.

That by the said act of Congress of February 22nd, 1889, and by various other acts of Congress, the United States donated to the State of Washington from the public domain, large quantities of land situated within said state and of the value of several millions of dollars; that said state has now left and undisposed of more than two million acres of said lands of the value of more than Forty Million Dollars ($40,000,000), much of which said land is located in the territory traversed by the railroads of the Great Northern and Northern Pacific Railway Companies, as hereinafter
5 alleged; that the value of said land and the salability thereof depends in very large measure upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies.

That many of said lands are vacant and unsettled, and located in regions not at present reached by railway lines and depend for settlement upon the construction of lines in the future; that it has heretofore been the practice of the said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory as well as to obtain traffic therefrom; that such new lines have
6 been built in the past very largely by reason of the rivalry heretofore existing between said companies for existing as well as new business; that under the consolidation and unity of control hereinafter set forth, such rivalry will cease and many of the lands now owned by the State of Washington will not be reached by railroads for years to come, if at all, owing to such combination and consolidation removing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value, and such occupation will depend

entirely upon the accessibility of railway lines and transportation facilities for marketing the produce raised thereon; that if said lands are sold and become occupied, they will add very largely to the taxable value of the property of said state, and that said lands cannot be sold or the income of said state increased thereby without the construction of railroad lines to, or adjacent to, the same. 7

B.

That the State of Washington is now, and for many years past has been, the owner of and continuously maintained within its limits an educational institution for the benefit of its citizens, known as the University of Washington; also two hospitals for the insane within its territorial limits; also three normal schools for the education of teachers within its territorial limits; also a state penitentiary located at Walla Walla within said state; also a School for Defective Youth located at Vancouver in said state; also a Reform School located at Chehalis in said state; also a Soldiers' Home located at Orting within said state.

That for many years past the State of Washington has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has been compelled to and in the future, of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the said State of Washington is compelled to ship over the different lines of railway owned and operated by the Great Northern Railway Company and the Northern Pacific Railway Company, and will annually pay to each of said Railway Companies large sums of money for the transportation over said lines of railway, of persons taken to the various institutions above named. 8

That the State of Washington is compelled to expend annually more than Five Hundred Thousand Dollars ($500,000) in the operation and maintenance of said public institutions, most of which sum is raised by general taxation upon the lands and other property of the citizens of said state and situated therein; that the amount of taxes which said state can collect and the successful maintenance of its said public institutions, as well as the performance of its governmental functions or affairs, depends largely upon the value of the real and personal property situated within its territorial limits and the general prosperity and business 9

success of its citizens; that the value of said real and personal property of the citizens of said state, as well as their business success and general prosperity, depend very largely upon maintaining in said state, free, open and unrestricted competition between the railway lines of the Great Northern and Northern
10 Pacific Railway Companies respectively, within said state.

IV.

Your Oratrix further alleges, that immense quantities of wheat and other products are shipped annually from Spokane and other competitive points within the State of Washington, and all on the lines of railway of the Great Northern and Northern Pacific Railway Companies, hereinafter referred to, to the cities of Seattle, Everett, Snohomish, Whatcom, Fairhaven, Sumas, Blaine and other cities along the lines of said railways within said state; that enormous quantities of merchandise, timber and other products have been, and will continue to be, shipped annually over said lines of railway between the cities of Spokane, Seattle, Everett, Snohomish, Whatcom, Fairhaven,
11 Sumas, Blaine and various other cities and villages along said lines of railway situated within said state, and which are purchased and used annually by the people thereof; that the residents of said state annually ship hundreds of millions of feet of lumber and large amounts of shingles, fruit and other commodities over each of said lines of railway from points in said state to points along the lines of said railway companies in the states of Idaho, Montana, the Dakotas and Minnesota; that a large amount of such products are ultimately consigned from points in the State of Washington to divers cities situated in the eastern states of the United States, over lines of railway connecting with said Great Northern and Northern Pacific lines of railway; that the competition in both freight and passenger
12 traffic to and from said places has always been sharp and active between said railway companies, and has secured to the residents of the State of Washington, and to the State of Washington itself, much lower rates for both freight and passengers than would otherwise have been obtained or than will and can be obtained in case the consolidation or unity of control and management of the Great Northern and Northern Pacific Railway Companies, hereinafter alleged, is not enjoined as herein prayed.

V.

That the Great Northern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, to-wit: under an act duly passed by the Territory of Minnesota, entitled, "An Act to incorporate the Minneapolis and 13
St. Cloud Railroad Company," approved March first, A. D. 1856, and various subsequent acts of the legislature of the State of Minnesota amendatory thereof and supplemental thereto; that on the 16th day of September, A. D. 1889, the corporate name of said company, originally being the Minneapolis & St. Cloud Railroad Company, was duly changed to the Great Northern Railway Company; that during the year 1889, said railway company caused to be constructed a line of railway situated in Minnesota, extending from St. Cloud to Hinckley, a distance of approximately eighty-five (85) miles, and immediately conveyed the same to the St. Paul, Minneapolis & Manitoba Railway Company, a corporation also organized under and by virtue of the laws of the State of Minnesota, hereinafter referred to as 14
the Manitoba Company; that said Manitoba Company, prior to the 1st day of February, 1890, built, purchased and put in operation various lines of railway within the State of Minnesota, as well as the States of North Dakota, Montana, Idaho and Washington, connecting by rail the Cities of Seattle, Spokane and various cities and villages within said State of Washington, with each other, and with the Cities of St. Paul and Minneapolis in the State of Minnesota, and divers other cities and villages along the lines of said railway companies between Seattle in the State of Washington, and St. Paul and Minneapolis in the State of Minnesota; that on the 1st day of February, A. D. 1890, said Manitoba Railway Company leased to the Great Northern Railway Company for a period of nine hundred and ninety-nine (999) years, all of the lines of railway, including the rolling stock then owned 15
and controlled by said Manitoba Company; that since said date the Great Northern Railway Company has continued to, and does now, control, operate and maintain each and all of said lines as one complete railroad system and thereby became and continued to be a corporation subject to the laws, regulations and provisions of the said State of Washington relating to railway or railroad corporations, including those provisions of the constitution of said

state hereinafter specifically pleaded or referred to; that since said date the Great Northern Railway Company has constructed divers subsidiary lines of railway running to divers villages and cities in the states last above named, connecting the same with the main line of said railway hereinbefore described, and as a part of its system of railways has, since the date last aforesaid, constructed
16 divers lines of railway running in an easterly and southeasterly direction across the State of Minnesota, and now owns all of the capital stock of the Eastern Minnesota Railway Company, a corporation organized under the laws of the State of Minnesota, and which owns and operates a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, in the said state, and by virtue of the ownership of such stock, dictates the policy of said railway company, controls its line of railway, and actually operates the same as a part of the Great Northern system; that all of said railways and railway lines are operated and controlled by and form a complete system under the name of the Great Northern Railway Company.

That the Charter of said Great Northern Railway Company
17 provides as follows: "That all of the affairs and business of said company shall be conducted by or under the direction of a Board of Directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and Laws of the United States, or the Laws of this Territory, or this Act."

Your Oratrix further alleges that the Board of Directors of said Great Northern Railway Company, at the time of the organization of the Northern Securities Company, hereinafter referred to, to-wit, on or about the 13th day of November, 1901, was, and now is, composed of the following named persons, to-wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, M. D. Grover, Jacob H. Schiff and Henry W. Cannon; and
18 at said date the managing or executive officers of said corporation were and now are as follows: President, James J. Hill; Vice-President, William P. Clough; Secretary and Assistant Treasurer, E. T. Nichols. That on said last named date said Great Northern Railway Company had issued, and there was then outstanding, a total of One Hundred and Twenty-five Million Dollars, par value, of the capital stock of said corporation, and your Oratrix is in-

formed and believes, and upon information and belief alleges, that said James J. Hill was on said last named date the owner or in possession and control of, or had subject to his direction and disposition, more than a majority of said capital stock so outstanding.

VI.

That for upwards of ten (10) years prior to 1893 the Northern Pacific Railroad Company, a corporation organized under and pursuant to an Act of Congress of the United States, owned and operated a line of railway between the City of Ashland, in the State of Wisconsin, extending west from the City of Ashland, in the State of Wisconsin, across the State of Minnesota, to Fargo, in the State of North Dakota, and another line of railway extending from the Cities of Minneapolis and St. Paul, in the State of Minnesota, to said City of Fargo, and an additional line of railway forming a part of the general system, from Fargo, in the State of North Dakota, westward across the States of North Dakota, Montana, Idaho and Washington, to Seattle, on Puget Sound, aggregating about four thousand five hundred (4,500) miles of railway.

VII.

That the Northern Pacific Railway Company is now and for upwards of five (5) years last past has been, a corporation organized under and by virtue of the laws of the State of Wisconsin, said corporation being organized during the year 1895; that since said last named date it has continued to operate its system of railways within the State of Washington, and thereby became and continued to be a corporation subject to the laws, regulations and provisions of the said state relating to railway or railroad corporations, including those provisions of the Constitution of the State of Washington hereinafter specifically pleaded or referred to.

That under the Charter or Articles of Incorporation of said Northern Pacific Railway Company, the powers of said company are delegated to and exercised by a board of fifteen directors; that during the month of April, 1901, the following named persons constituted and now are the members of the Board of Directors of said last named company: James J. Hill, Robert Bacon,

George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas. That on the 13th day of November, 1901, J. Pierpont Morgan, with certain other persons to your Ora-
22 trix unknown, but who were acting with said Morgan, owned and had in their possession, or held under and subject to their control and disposition, upwards of eighty-five (85) per cent. of the total capital stock of said Northern Pacific Railway Company then outstanding. That the total amount of capital stock of said Northern Pacific Railway Company then issued and outstanding amounts to One Hundred and Fifty-five Millions of Dollars, par value, Seventy-five Millions of Dollars of which was preferred stock subject to retirement as provided by the articles of incorporation and agreement under which the same was issued.

That during the year 1893, the said Northern Pacific Railroad Company became insolvent, and all of the property of said last named company, of whatever kind or character, was duly placed
23 in the hands of receivers appointed for that purpose by the Circuit Court of the United States for the Eastern District of Wisconsin: and thereafter in proceedings ancillary thereto, by the various circuit courts of the United States in whose jurisdiction said property was located; that after the organization of said Northern Pacific Railway Company, it duly purchased and became the owner of the entire railroad properties and railway lines, including the right of way, rolling stock and capital stock formerly owned by the Northern Pacific Railroad Company, and immediately thereafter entered into the possession thereof, and at all times since has continuously owned and operated each and all of said lines of railway so situated within the State of Washington, and which connect the Cities of Spokane, Seattle and Tacoma and various other villages and cities within said state and connecting with
24 the lines of railway outside of said state; that the lines of railway now owned and operated by said Great Northern Railway Company within the State of Washington are parallel and competing lines for freight and passenger traffic with the lines of railway now owned, operated and controlled by said Northern Pacific Railway Company within the State of Washington, between the following points in said state, to-wit: the City of Spokane and the City of Seattle and the various cities and villages between said points; also between the said City of Seattle and the Cities of

Sumas and Blaine and the various cities and villages between said points, as well as the country adjacent to the lines of railway between each and all of said cities; and the said lines of railway owned, operated and controlled by said Great Northern Railway Company; and also the lines of railway owned, operated and controlled by the Northern Pacific Railway Company, which connect with the said lines of railway owned, operated and controlled by each of said companies respectively within the State of Washington, are parallel and competing lines through the States of Washington, Idaho, Montana, North Dakota and Minnesota, to St. Paul and Minneapolis in the last named state, for passenger and freight traffic; that during all of the time aforesaid, each of said lines of railway were maintained and operated by said respective companies as common carriers of freight and passengers within the State of Washington, and that said companies are now and for upwards of eleven (11) years last past have been the only railway companies owning or operating a line of railway across said state and connecting the Pacific Ocean by rail with points in Minnesota; also the only lines of railroad running east and west across the State of Washington; and also the only line of railroad running east and west between the City of Spokane and the City of Seattle in said state; also the only line of railway traversing east and west the northern tier of states of the United States lying west of the Mississippi River and connecting such territory or territory tributory thereto by rail with the Pacific Ocean. 25 26

VIII.

That the Chicago, Burlington and Quincy Railway Company is and, for many years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; and, as such, until the disposition of its capital stock as hereinafter alleged, owned, operated and controlled an extensive system of railway lines extending from the City of Chicago, in the State of Illinois, in a westerly direction to the City of Denver, in the State of Colorado; and also in a westerly and northwesterly direction from said City of Chicago, to the City of Billings, in the State of Montana; which last named point is a junction and competitive point for freight and passenger traffic with said Northern Pacific Railway Company; and also from said City of Chicago to the Cities of St. Paul and Minneapolis, in the State of Minnesota; 27

and in addition to said main lines, owned, operated and controlled a large number of connecting and tributary lines, extending to various cities and towns in the States of Illinois, Iowa, Missouri, Wisconsin, Minnesota, Nebraska, Kansas, Wyoming and Montana, That the total mileage of said railway company is approximately Seven Thousand Four Hundred Miles. That during the year 1901,
28 the said Great Northern Railway Company and said Northern Pacific Railway Company jointly purchased ninety-eight per cent. of the total capital stock of said Chicago, Burlington and Quincy Railway Company, aggregating approximately One Hundred and Seven Millions of Dollars, par value, and now own the same; and issued in payment therefor the joint bonds of said Great Northern and Northern Pacific Railway Companies, payable in twenty years from the date thereof, and bearing interest at the rate of four per cent. per annum, payable semi-annually. That said Great Northern and Northern Pacific Railway Companies issued and delivered in exchange for each One Hundred Dollars in amount of said Chicago, Burlington and Quincy Railway Company stock Two Hundred Dollars in amount of the said bonds.

29 That said bonds were issued by the Great Northern and Northern Pacific Railway Companies in contemplation of ultimately placing the Great Northern and Northern Pacific lines of railway under a common source of control, and for the purpose of promoting their joint interests.

That under and by virtue of the purchase of said stock the joint ownership and control of the said Chicago, Burlington & Quincy Railway Company is vested in and ever since has been exercised by the said Great Northern and Northern Pacific Railway Companies.

IX.

That the defendant Northern Securities Company is a corporation organized, existing in and doing business under and by virtue
30 of the laws of the State of New Jersey. That said corporation was organized on the 13th day of November, A. D. 1901, with its principal office for the transaction of its business located at the City of Hoboken, County of Hudson and State of New Jersey and is a citizen of the State of New Jersey.

That the Articles of Incorporation of said Northern Securities Company are as follows:

CERTIFICATE OF INCORPORATION

OF

NORTHERN SECURITIES COMPANY.

STATE OF NEW JERESY, SS.:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled An Act Concerning Corporations (Revision of 1896), and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First: The name of the corporation is NORTHERN SECURITIES COMPANY.

Second: The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the City of Hoboken, County of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third: The objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while

owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such
34 bonds or other securities or evidences of indebtedness or stock.

(5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth: The total authorized capital stock of the corporation is Four Hundred Million Dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the cor-
35 poration will commence business is thirty thousand dollars.

Fifth: The names and postoffice addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and Postoffice Address.	Number of Shares.
George F. Baker, Jr., 258 Madison Avenue, New York, New York.	100
Abram M. Hyatt, 214 Allen Avenue, Allenhurst, New Jersey.	100
Richard Trimble, 53 East Twenty-fifth Street, New York, New York.	100

36 Sixth: The duration of the corporation shall be perpetual.

Seventh: The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one

year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally. 37

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor. 38

The Board of Directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the Board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy. 39

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any other officer or employe of the corporation may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such

power of removal may be conferred by the by-laws, or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall
40 have and may exercise all or any of the powers of Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the
41 declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the corporation, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of
42 the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the Board of Directors or by a resolution of the stockholders.

The Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the

stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, the twelfth day of November, 1901.

GEO. F. BAKER, JR. (L. S.) 43
ABRAM M. HYATT, (L. S.)
RICHARD TRIMBLE, (L. S.)

Signed, sealed and delivered
in presence of
GEO. HOLMES.

STATE OF NEW YORK,
County of New York, } ss:
MANHATTAN.

BE IT REMEMBERED, That on this twelfth day of November, 1901, before the undersigned, personally appeared George F. Baker, junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; 44 and I, having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

Endorsed,

"Received in the Hudson Co., N. J., Clerk's Office, Nov 13, A. D. 1901, and recorded in Clerk's Record No. ....., on Page .....
"MAURICE J. STACK, Clerk."

"Filed Nov. 13, 1901, George Wurts, Secretary of State."

That said Northern Securities Company was incorporated at the instigation and request, and under the direction of, James 45 J. Hill and William P. Clough, and certain other stockholders of said Great Northern Railway Company to your Oratrix unknown, who were co-operating with said James J. Hill and William P. Clough, and who, with said Hill and Clough, owned and controlled, or have the disposition and management, as hereinafter alleged, of a very large majority of the capital stock of said Great Northern Railway Company , and J. Pierpont

Morgan and certain other stockholders of said Northern Pacific Railway Company, to your Oratrix unknown, who were co-operating with said Morgan, and who, with said Morgan, owned and controlled, or have the disposition and management of a very large majority of the capital stock of said Northern Pacific Railway Company. That said North-
46 ern Securities Company was formed by George F. Baker, Jr., and Richard Trimble, of the City of New York and State of New York, and Abram Hyatt, of Allenhurst, in the State of New Jersey, who adopted the said Articles of Incorporation. That said three last named parties had no interest in said corporation other than the formation of the same for and at the request of said James J. Hill, William P. Clough, J. Pierpont Morgan, and their several associate stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, as above alleged, acting in concert with said parties.

That said James J. Hill, William P. Clough and J. Pierpont Morgan, who, with their associates, did on said 13th day of November, 1901, and prior thereto, own and control a large majority of the
47 capital stock of both said Great Northern Railway Company and said Northern Pacific Railway Company, were prior to, and at the time of, the organization of said Northern Securities Company, almost continually in conference with each other and with a large number of other stockholders of said Great Northern Railway Company and said Northern Pacific Railway Company, but whose names are to your Oratrix unknown, considering such organization and the scheme and agreement herein referred to, and the means and manner by which the laws of Washington, hereinafter referred to, could be most successfully evaded or avoided, all of which facts were well known to the organizers of said Northern Securities Company, including the parties executing the said Articles of Incorporation. That said Northern Securities Company was organized solely for the purpose of carrying out and accomplishing the
48 designs, agreement and plans of said James J. Hill and J. Pierpont Morgan and their said associate stockholders, as herein set forth, and to effect a consolidation of the property, railway lines, corporate powers and franchises of said Great Northern and Northern Pacific Railway Companies respectively, through said defendant, the Northern Securities Company.

That prior to the organization of said Northern Securities Company, the said owners and holders of a large majority of the capital

stock of said Great Northern Railway Company, as well as the owners and holders of a large majority of the capital stock of said Northern Pacific Railway Company, as a part of the scheme or plan herein alleged, as well as a part of the plan and purpose of the organization of said Northern Securities Company, entered into a mutual agreement or arrangement, the exact terms of which are unknown to your Oratrix, but which is in substance as follows: 49

The said owners of a large majority of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, mutually agreed with each other and certain persons who thereafter became the officers and directors of said Northern Securities Company to transfer or cause to be transferred to said Northern Securities Company in exchange for the capital stock of said last named company substantially all of the capital stock of said Great Northern Railway Company and said Northern Pacific Railway Company, respectively; the said capital stock of the Great Northern Railway Company to be transferred to and exchanged for the capital stock of the said Northern Securities Company on the basis of one share of the capital stock of the Great Northern Railway Company for one and 80-100 shares of the capital stock of said Northern Securities Company, and one share of the common stock of said Northern Pacific Railway Company for one and 15-100 shares of the capital stock of said Northern Securities Company. The $75,000,000 of the preferred stock of said Northern Pacific Railway Company to be retired in accordance with the provisions of the Articles of Incorporation of said Northern Pacific Railway Company, and the conditions and agreements under which the same was issued; said retirement to take place on the 1st day of January, 1902. The funds for retiring said preferred stock to be raised by the issuance by said Northern Pacific Railway Company of its negotiable bonds, bearing date November 15th, 1901, of the aggregate amount of Seventy-five Million Dollars, payable January 1st, 1907, in gold coin of the United States, with interest thereon at the rate of four per cent. per annum, payable semi-annually in like gold coin, from and after January 1st, 1902. The said bonds, however, to be convertible at the option of either the holders thereof, or said Railway Company, into shares of the common stock of said Northern Pacific Railway Company at the rate of one share of stock for each One Hundred Dollars of the principal sum of such bonds, and the said common stock, when so taken in exchange for

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such bonds, to be converted into stock of said Northern Securities Company upon the basis of one share for each one and 15-100 shares of stock of said Northern Securities Company.

That said preferred stock could only be retired by resolution of the Board of Directors of said Northern Pacific Railway Company; that a very large majority of said preferred stock was
52 owned by certain individuals who were opposed to the agreement and plan herein referred to relative to turning over the management and control of said Northern Pacific Railway Company to said Northern Securities Company, and the holding of its stock by said Northern Securities Company; that the owners of said preferred stock so opposed to said agreement and plan were also owners of sufficient of the common stock of said Northern Pacific Railway Company to give them a small majority of the total capital stock of said Northern Pacific Railway Company; thus making it necessary, in order to carry out the plan and agreement herein set forth and to vest the management and control of said Northern Pacific Railway Company in said Northern Securities Company in the manner and for the purposes herein alleged, to retire said pre-
53 ferred stock; all of which was well known to the Board of Directors of said Northern Pacific Railway Company and to said J. Pierpont Morgan and his associate stockholders of said Northern Pacific Railway Company, as well as said Northern Securities Company.

That on or about the 13th day of November, 1901, the Board of Directors of said Northern Pacific Railway Company took such official action as was necessary to retire said preferred stock upon the basis and in accordance with the plan and agreement herein set forth; and thereafter said preferred stock was retired by the issuance of the convertible bonds to the amount and in the manner herein alleged. That immediately after the retirement of said preferred stock, said Northern Pacific Railway Company, acting through its Board of Directors and executive officers, exercised its
54 right and option of declaring said bonds to be convertible into shares of the common stock of said Northern Pacific Railway Company, and thereupon the same were so converted and the common stock of said Northern Pacific Railway Company issued in exchange therefor, upon the basis and for the purposes herein alleged. That in order to prevent the persons who owned said preferred stock, and who were opposed to the carrying out of the plan and agreement herein referred to, from acquiring a like control of the com-

mon stock, it was provided that the $75,000,000 of common stock into which the said bonds were convertible could only be subscribed for and taken by holders of the then outstanding $80,000,000 of the common capital stock of said Northern Pacific Railway Company; each share of said common stock then outstanding entitling the owner and holder thereof to take an additional seventy-five-eightieths of a share of said $75,000,000 additional common 55
stock. That the retirement of said preferred stock and the conversion of the said bonds into common stock of said Northern Pacific Railway Company, and the exchange of said common stock for stock of said Northern Securities Company, as herein alleged, were each and all a part of the agreement, plan and scheme of said J. Pierpont Morgan and his said associate stockholders of said Northern Pacific Railway Company who then and there owned and controlled a large majority of the then outstanding common stock of said Northern Pacific Railway Company, under and by which the complete management and control of said Northern Pacific Railway Company was to be, and was thereafter, turned over to and vested in said Northern Securities Company in order that said Northern Pacific Railway Company, its property and franchises, 56
might be in effect consolidated with the property and franchises of said Great Northern Railway Company, as herein alleged. That said James J. Hill and his associate stockholders of said Great Northern Railway Company had full knowledge of and assisted in retiring said preferred stock for the purposes and objects herein alleged. That as a part of said agreement and plan entered into between said James J. Hill and his associate stockholders and said J. Pierpont Morgan and his associate stockholders, each and all of whom were then, and are now, acting in concert for the purpose of evading and violating the Laws of the State of Washington, in the manner, for the purposes, and with the object and design herein set forth, and in furtherance of said purposes and design, and to avoid the effect of any litigation which might be instituted to defeat the consummation of the agreement, plan and scheme herein 57
referred to of vesting the complete management and control of the railway lines, properties and franchises of said Great Northern and Northern Pacific Railway Companies in said defendant Northern Securities Company, said parties further undertook and agreed with each other and the persons who thereafter became the officers and directors of the defendant Northern Securities Company that pending the delivery and transfer of a majority of the capital stock

of said Great Northern Railway Company to said Northern Securities Company, the same should be held by or under the control of some person or corporation to your Oratrix unknown; and that pending such delivery it was mutually agreed between said Hill and his associate stockholders and said Morgan and his associate stockholders and the persons who thereafter became the directors
58 and officers of the Northern Securities Company, as well as the person or corporation so temporarily holding said stock that the same should be held during said period for the purposes above set forth in trust for the use and benefit of the defendant, the Northern Securities Company; and that during such time the parties so holding said stock should attend and vote the same at all meetings of the stockholders of said Great Northern Railway Company, in the interests of the defendant, and as directed by the Board of Directors of said Northern Securities Company or the executive committee thereof, or in unison with the stock of said railway companies, actually assigned to and held by the defendant. That said Northern Securities Company has not purchased, and does not intend to purchase, the stock of either of said railway
59 companies, except by issuing its stock in exchange for and in lieu of the stock of said railway companies on the basis and in the manner and for the purposes herein alleged.

That for the unlawful purposes aforesaid the said Northern Securities Company, by circular letter heretofore issued to the public, has offered and is still offering to issue and exchange for the capital stock of the said Great Northern and Northern Pacific Railway Companies, capital stock of said Northern Securities Company to the amount of One Hundred and Eighty Dollars par value thereof for each share of capital stock of said Great Northern Railway Company and to the amount of One Hundred and Fifteen Dollars par value thereof for each share of stock of said Northern Pacific Railway Company. And that the said Northern Securities Company is about to receive, on the basis aforesaid, and will, unless
60 enjoined therefrom, receive, hold and hereafter control all the capital stock of said Great Northern and Northern Pacific Railway Companies.

That on the basis of exchange aforesaid, the former stockholders of the Great Northern Railway Company have received, or will receive, about fifty-five (55) per cent. of the stock of the Northern Securities Company, the balance going to the former

owners of the common stock of the Northern Pacific Railway Company.

X.

That the organization of said Northern Securities Company in the manner hereinbefore alleged, and the making of said agreement or arrangement hereinbefore referred to, are each and all a part of a scheme or plan on the part of said James J. Hill and his said associate stockholders of the Great Northern Railway Company, and J. Pierpont Morgan and his said associate holders of the stock of said Northern Pacific Railway Company, under and by which the said two last named Railway Companies are to be in effect consolidated, and the complete management and control of the business affairs of said corporations respectively placed in one body and under the direction and control of one man or one Board of Directors, through and by means of said defendant. That pursuant to said plan, agreement and arrangement, and in consummation thereof, and for the purpose of placing the complete management and control of said Great Northern Railway Company and said Northern Pacific Railway Company under one management, and for the purpose of establishing, in effect, a consolidation of said railway companies, together with said railway lines and properties, through said Securities Company, the said J. Pierpont Morgan and his associate stockholders have actually assigned and delivered to said Northern Securities Company upwards of ninety-eight per cent. of the total capital stock of said Northern Pacific Railway Company; and your Oratrix alleges, on information and belief, that said James J. Hill and his associate stockholders of said Great Northern Railway Company, have also actually assigned and delivered to said Northern Securities Company upwards of seventy-five per cent. of the capital stock of said Great Northern Railway Company; and that said Northern Securities Company is voting all of said stock, collecting the dividends thereon, and in all respects acting as owner thereof in the organization, management and operation of said railways, and will continue to do so unless restrained by this court. 61 62 63

That the sole purpose, object and effect of the transfer of said stock by J. Pierpont Morgan and his associates and said J. J. Hill and his associates, as well as the incorporation of the Northern Securities Company and the receipt by it of a controlling amount

of the capital stock of the said Northern Pacific and Great Northern Railway companies, as well as each act of the officers and Board of Directors thereof, in entering into, adopting or executing the agreement or plan herein set forth, including the issuance and exchange of the capital stock of the Northern Securities Company for the stock of the said Northern Pacific and Great Northern
64 Railway Companies on the basis hereinbefore set forth, was and is to place the said railway companies and the property and franchises thereof under a single management, and enable a single party or body of men acting as the Board of Directors of the said Northern Securities Company, or such Executive Committee as they may designate, to fix all rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies, and thereby create, foster and perpetuate a monopoly in railway traffic in the State of Washington; to unlawfully restrain and prevent competition among said railway systems in respect to such trade and commerce; to determine what trains shall be operated over each or any of the lines of railway of each of such railway companies; and to remove all com-
65 petition in freight or passenger traffic over said parallel and competing lines, and prevent the building of lines into new territory, as well as into territory now reached by only one of such lines of railway. That the purpose of said agreement and unlawful conspiracy and of the parties thereto, was the creation of a trust, or the formation of a combination by which a monopoly of railway traffic in the State of Washington and elsewhere, would be perfected; that the said Northern Securities Company was organized for and is to be used as a medium through and by which this unlawful agreement, conspiracy, purpose and object can, and, if not enjoined, will be, accomplished; that this agreement and conspiracy, and the consummation thereof, is in restraint of trade, tends to create a monopoly in railway traffic in
66 the State of Washington and elsewhere, is against public policy and void; that the holders of a large majority of the capital stock of the said Great Northern Railway Company and the holders of a majority of the common stock of the Northern Pacific Railway Company, as well as each member of the Board of Directors of said railway companies, had knowledge of, consented to, and assisted in carrying out the agreement, arrangement and scheme hereinbefore set forth, by which a large majority of the capital stock of

each of said railway companies was to be exchanged for the capital stock of said Northern Securities Company, upon the basis and for the purposes herein set forth; that said stockholders of the Great Northern and Northern Pacific Railway Companies so consenting to, taking part and assisting in the formation of said Northern Securities Company, and in perfecting the agreement and scheme herein set forth, constitute all of the stockholders of the said Northern Securities Company; and the Board of Directors and executive officers of said Northern Securities Company, hereinafter named, have been selected from and elected by such stockholders of said Great Northern and Northern Pacific Railway Companies. 67

XI.

That if the defendant, the Northern Securities Company, has not acquired a large majority of the capital stock of the defendant the Great Northern Railway Company, it is because said James J. Hill and his associates and said J. Pierpont Morgan and his associates in the combination or conspiracy charged in this bill, or some of them, since it became apparent that the legality of their corporate device for the merger of the stock of competing railway companies through the instrumentality of a central or holding corporation, would be assailed in the courts, have purposely withheld, or caused to be withheld, a large amount of the capital stock of said railway company from transfer for the stock of the Northern Securities Company, and have purposely discouraged and prevented the transfer and exchange of such stock for the stock of the Northern Securities Company, all for the purpose of concealing the real scope and object of the unlawful combination or conspiracy aforesaid, and of deceiving and misleading the state and federal authorities, and of furnishing a ground for the defense that the Northern Securities Company does not hold a clear majority of the stock of the Great Northern Railway Company. The complainant avers that such stock, so withheld or not transferred to the Northern Securities Company, is now in the hands of some person or persons (unknown to the complainant) friendly to and under the influence of the said parties named and their associates aforesaid, or some of them, and will either not be voted, or be voted in harmony with the Great Northern stock held by the Northern Securities Company, until the ques- 68 69

tion of the legality of this corporate device for merging competing railway lines shall be finally and judicially determined, when such stock will either be turned over to the Northern Securities Company or continue to be held and voted outside said company but in harmony with the Great Northern stock held and voted by it, as may at the time seem advisable.

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XII.

That by the organization of the Northern Securities Company for the transfer thereto of said stock in the execution of said unlawful plan and conspiracy, the individual stockholders of these two independent and competing railway companies were to be eliminated and a single common stockholder, the Northern Securities Company, was to be substituted; the interest of the individual stockholders in the property and franchises of the two railway companies was to terminate, being thus converted into an interest in the property and franchises of the Northern Securities Company. The individual stockholders of the Northern Pacific Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Northern Pacific system, and the individual stockholders of the Great Northern Railway Company were no longer to hold an interest in the property or draw their dividends from the earnings of the Great Northern system, but having ceased to be stockholders in said railway companies and having become stockholders in what may be described as in part a holding corporation, both classes of holders were to draw their dividends from the earnings of both systems, collected and distributed by such holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems, and by practically pooling the earnings of both systems for the benefit of the former stockholders of each, and by vesting the selection of the directors and officers of each system in a common body, to-wit: the holding corporation, with not only the power but the duty to pursue a policy which would promote the interests, not of one system at the expense of the other, but of both at the expense of the public, all inducement for competition between the two systems was to be removed, a virtual consolidation effected, and a monopoly of the interstate and foreign commerce formerly carried on by the two systems as independent competitors established.

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XIII.

That under the articles of association of the said Northern Securities Company, its corporate powers and entire business management is vested in a Board of Directors consisting of such number as shall be fixed from time to time by the bylaws of said corporation; that the Board of Directors is authorized to make such bylaws as it deems best, and to alter, amend or repeal the same. Said Board of Directors thereby has power to determine its own number and adopt regulations for its own conduct and the conduct of the affairs of said corporation. The articles of association further provide that said Board may appoint an executive committee thereof, which shall exercise all the powers and duties of said Board of Directors. Among other purposes and powers designedly inserted in said articles is the purpose and power to not only hold and vote shares of the capital stock of other corporations, but to aid in any manner any corporation of which any bonds or stock are held, and to do any act or things designed to protect, preserve, improve or enhance the value of any such bonds or stock. 73 74

That as a part of such illegal conspiracy hereinbefore set forth, it was agreed between said James J. Hill and his said associates, and J. Pierpont Morgan and his said associates, by and with the knowledge, assent and approval of the officers and directors of the Great Northern and Northern Pacific Railway Companies, that the first Board of Directors of the said Northern Securities Company should be named by said J. Pierpont Morgan from the respective boards of directors of the said Great Northern, Northern Pacific, and Chicago, Burlington & Quincy Railway Companies; that said J. Pierpont Morgan was acting in harmony with said James J. Hill, President of the Great Northern Railway Company, and it was then and there mutually understood and agreed as a part of such illegal plan and conspiracy, that only such persons should be designated members of such Board of Directors as were first approved by said James J. Hill, such approval to be given only to such persons as would act in harmony with and under the direction, dictation and control of said James J. Hill; and complainant further alleges that said James J. Hill was, in furtherance of said plan, elected or designated President of the Northern Securities Company. 75

That on or about the 14th day of November, 1901, as a part of such plan and conspiracy, and pursuant to the illegal agreement or scheme above referred to, and in consummation thereof, the Board of Directors of the said Northern Securities Company was designated by J. Pierpont Morgan and James J. Hill and elected by the stockholders and consisted of the following named persons,
76 to-wit: James J. Hill, George F. Baker, Daniel S. Lamont, James Stillman, N. Terhune, Samuel Thorne, Charles E. Perkins, Jacob H. Schiff, William P. Clough, John S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman; that on the 15th day of November, 1901, pursuant to said plan and conspiracy, and in consummation thereof, the said Board of Directors met and elected the following executive officers of the said company, to-wit: President, James J. Hill; First Vice-President, John S. Kennedy; Second Vice-President, George F. Baker; Third Vice-President, D. Willis James; Fourth Vice-President, William P. Clough; Secretary and Treasurer, E. T. Nichols.

Complainant further alleges that said James J. Hill and William P. Clough were, on said last named date, President and
77 Vice-President, respectively, of said Great Northern Railway Company; that said E. T. Nichols was on said date, and now is, Secretary and Treasurer of said Great Northern Railway Company.

That said James J. Hill and his associate directors and officers of said Northern Securities Company own and control a majority of the capital stock of said last named company; that during the month of December, 1901, said Northern Securities Company, through its directors and executive officers, began dictating the policy and management of said Northern Pacific as well as said Great Northern Railway Company, and ever since has been and now is directing and managing the business and property of both said Great Northern and Northern Pacific Railway Companies, and determining and enforcing freight and passenger rates on many of
78 the lines of railway of said companies in the State of Washington, and also the manner and means of handling the freight and passenger business of said companies on such lines of railway and will continue so to do unless enjoined as herein prayed.

That said Northern Securities Company has no authorized agent or representative within the State of Washington, on whom a summons or other process in any legal proceeding may be

served. And is not the owner of any property of any nature whatsoever situated in the State of Washington.

That the massing and concentration of said railway properties and the control and management thereof in the said Northern Securities Company in the manner hereinbefore outlined, tends to and does create a monopoly in railway traffic in the State of Washington, and elsewhere and tends to and does deprive the State of Washington and the citizens thereof of the privilege of competition in fixing charges and rates of transportation for a large amount of freight transported annually over the lines of railway of each of said railway companies, between stations upon the lines of railway of both said companies within said state. 79

XIV.

That it has ever been a part of the settled and public policy of the State of Washington to prohibit therein, the consolidation in any manner, of competing and parallel lines of railway and to this end the people thereof, on the first day of October, A. D. 1889, in organizing and adopting a state government, adopted as a part of the constitution of said state, the following provisions, which ever since have been and now are a part of the organic law of said state, to-wit: 80

"Art. XII., Sec. 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

"Art. XII, Sec. 16. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a competing line."

"Art. XII., Sec. 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production 81

or regulating the transportation of any product or commodity. * * *"

That in the organization of the Northern Securities Company, the purpose, object and design of said organizers and promoters thereof, both in the organization and in making and carrying out the said plans, agreement and conspiracy hereinbefore
82 referred to, and the purpose, intent and design of the said Northern Securities Company, as well as the said Great Northern and Northern Pacific Railway Companies, their stockholders, directors, executive committee, officers, agents and representatives in the execution of such plan, agreement and conspiracy, was and is to violate the said constitutional provisions and to escape and evade the terms and provisions theerof, and effect a consolidation of the stock of the said railway corporations, and a practical consolidation of said railway properties as herein alleged; and was and is to make a contract and combination between common carriers doing business in the State of Washington, in and by which the earnings of such common carrier doing the carrying or transporting of freight and passengers in said state are to be shared by the other
83 not doing such carrying; and further alleges that the defendant Northern Securities Company is simply a holding company, but, as such, is a common carrier or railroad company within the meaning of the constitution of said state and the laws of the land. That each and all of said acts violates and evades the laws of the land and the settled public policy and laws of the State of Washington, and unless said defendants are enjoined as hereinafter prayed, will inflict irreparable injury upon said state and its people.

That for many years last past, it has been and is now, a part of the settled policy of the State of New Jersey to permit the consolidation of only such lines of railroad, as are or can be connected so as to form continuous lines of railway, and not to per-
84 mit the consolidation of parallel or competing lines and to that end, in the year 1885, the legislature of the State of New Jersey enacted a law which permits the consolidation of such lines as are or may form connecting or continuous lines of railroad.

Your Oratrix is informed and believes, and upon information and belief alleges, that the defendant, the Northern Securities Company, is not the owner or holder of any property or stock or securities of any corporation, except as above set forth, and is

not engaged in any business whatever, except such as is incidental to the holding of such stock, and indirectly dictating through its officers, or the officers and directors of said railway companies, the general management and control of the said railway companies and lines and properties thereof.

Your Oratrix further alleges that if the defendant, the Northern Securities Company, is permitted to control and manage the 85
affairs of the said Great Northern and Northern Pacific Railroad Company, either directly or indirectly, in the manner hereinbefore alleged, or otherwise, or to vote the stock of said railway companies, or either of them, all competition between said companies will forever cease, and a monopoly in railway traffic in the State of Washington and elsewhere, be created, to the great, permanent and irreparable damage and injury to said state and to the people thereof, and in violation of its laws and of the laws of the land.

That your Oratrix has and can have, no other adequate remedy or relief by action at law, except as herein prayed for in equity.

To the end, therefore, that the defendants, the Northern Securities Company, the Great Northern Railway Company and 86
the Northern Pacific Railway Company, may, if they can, show cause why your Oratrix should not have the relief herein prayed for, and that they may be compelled to answer all and singular the premises and all the matters and things herein stated, as fully and particularly as if they were here again repeated, and the said companies thereunto interrogated, and that the said defendants may be required to answer without oath, their answer under oath being hereby expressly waived, and that the defendant, the Northern Securities Company, its officers, directors, attorneys, representatives, agents, servants and executive officers, and each of them, be perpetually enjoined and restrained:

First: From voting at any meeting of the stockholders of either the said Great Northern or Northern Pacific Railway Com- 87
pany, any of the capital stock of either of said companies, by any means or in any manner whatever, or from in any manner acting as the owner of any shares of capital stock of either of them, and from attending by reason of such ownership, possession or control of stock, either through its officers or by proxy, any meeting of the stockholders of either of said railway companies.

Second: From in any way aiding, advising, directing, inter-

fering with or in any way taking part, directly or indirectly, in any manner, in the management, control or operation of any of the lines of railway of either of said railway companies, or in the management or control of the affairs thereof.

Third: From exercising any of the powers or performing any of the duties or in any manner acting as a representative, officer,
88 member of the board of directors, or employe of either said Great Northern or Northern Pacific Railway Company, or in any way exercising the management, direction or control of the same.

Fourth: In case it shall appear upon the trial that the defendant the Northern Securities Company holds or controls, or is acting in concert with the owners of a majority of the capital stock of either of said railway companies, and owns and controls a minority of the stock of the other of said companies, then that the defendant, the Northern Securities Company, its officers, directors, agents or representatives, be enjoined and restrained from receiving, acquiring or controlling any additional capital stock of said other railway company.

Fifth: That the defendants, the Great Northern Railway
89 Company and the Northern Pacific Railway Company, their stockholders, officers, directors, agents and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of any shares of the capital stock of either of said railway companies, and from permitting said Northern Securities Company to vote such stock, whether by proxy or otherwise, and from paying any dividend upon such stock to said company or its assigns, unless authorized by this court, or from recognizing as valid any transfer, mortgage, pledge or assignment by such company, of such stock, unless authorized by this court.

Sixth: That the Great Northern Railway Company, its stockholders, officers, directors, agents and servants, and each of them,
90 be perpetually enjoined from in any manner interfering with, dictating, or controlling the policy of the management or the business affairs of the said Northern Pacific Railway Company.

Seventh: That the Northern Pacific Railway Company, its stockholders, officers, directors, agents and servants, and each of them, be perpetually enjoined from in any manner interfering with, dictating or controlling the policy of the management or the business affairs of the said Great Northern Railway Company.

Eighth: And your Oratrix further prays the leave of this court to amend this its bill of complaint, if amendment thereto shall become necessary, including the right to bring in other parties defendant for the purpose of giving force and effect to any decree that may be made by the court herein.

And that the complainant be granted such other and further relief as the nature of the case may require, and as shall be 91
agreeable to equity and good conscience:

MAY IT PLEASE YOUR HONORS: To grant unto your Oratrix a writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendants, the Northern Securities Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, and a citizen of the State of New Jersey as herein alleged, the Great Northern Railway Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, and a citizen of the State of Minnesota as herein alleged, and the Northern Pacific Railway Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, and a citizen of the 92
State of Wisconsin as herein alleged, strictly commanding said defendants under certain penalty, and on a certain day therein to be named, to be and appear before this Honorable Court to stand and abide by such order and decree as this Honorable Court may make in the premises. And to this end your Oratrix will ever pray.

W. B. STRATTON,
Attorney General, State of Washington,
and Solicitor for Complainant.

UNITED STATES OF AMERICA,
State of Minnesota,
DISTRICT OF MINNESOTA,

W. B. Stratton, being duly sworn, upon oath says, he is the 93
Attorney General of the State of Washington, and that he has resided in the State of Washington for a number of years last past; that he is well acquainted with the facts and circumstances set forth in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his knowledge, except as to matters therein stated upon in-

formation and belief, and as to such matters he is informed and believes the same to be true.

.....

Subscribed and sworn to before me
this ..... day of March, A. D. 1902.

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Notary Public, Ramsey County, Minnesota.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1901.

STATE OF WASHINGTON,

Complainant.

vs.

NORTHERN SECURITIES COMPANY, a Corporation,
GREAT NORTHERN RAILWAY COMPANY, a Corporation,
and
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendants.

IN EQUITY.

Now comes the complainant, the State of Washington, by W. B. Stratton, its Attorney General, and moves the Court for leave to present and file the accompanying bill of complaint.

W. B. STRATTON,
Attorney General.
and Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1901.

THE STATE OF WASHINGTON,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation, GREAT NORTHERN RAILWAY CO., a Corporation, and NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendants.

IN EQUITY.

BRIEF ON MOTION FOR LEAVE TO PRESENT AND FILE BILL OF COMPLAINT.

STATEMENT OF FACTS.

The State of Washington was admitted into the Union on the 11th day of November, 1889, and on the 1st day of October of that year, its Constitution was duly adopted by the people of that State, and contains the following provisions, to-wit:

"Art. XII., Sec. 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

"Art. XII., Sec. 16. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a competing line."

"Art. XII., Sec. 22. Monopolies and trusts shall never be allowed in this State, and no incorporated company, co-partnership, or association of persons in this State shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. * * * "

It appears from the complaint that on or before the 1st day of February, A. D. 1890, the St. Paul, Minneapolis & Manitoba Railway Company, constructed a line of railway across the northern tier of states of the United States lying west of Lake Superior, and on said date leased the same for the period of nine hundred and ninety-nine years to the Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota. (Fols. 14 and 15). The Northern Pacific *Railway Company* was organized under the laws of the State of Wisconsin in 1895, and immediately thereafter succeeded to the ownership, business and management of a line of railway extending across said states, including the State of Washington, theretofore constructed and owned by the Northern Pacific *Railroad Company*. Both the Northern Pacific Railway Company and the said Great Northern Railway Company, entered the State of Washington subsequent to the adoption by said State of the constitutional provisions above quoted, and thereby accepted the terms of the prohibitory features thereof.

It appears from the bill of complaint, that the defendant, the Northern Securities Company, a New Jersey corporation, is by its articles of incorporation authorized to "acquire by purchase, subscription or otherwise, and to hold * * * any shares of capital

stock created or issued by any other corporation or corporations of the State of New Jersey, or of any other state, territory or country," and while the owner of such stock, to "exercise all the rights, powers and privileges of ownership, including the right to vote thereon;" also *"to aid in any manner any corporation or association of which any bonds or other securities or evidences of stock are held by such corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds, or any securities or evidences of indebtedness or stock."*

It also appears from the bill of complaint that the Northern Securities Company was organized at the instigation of and by parties subject to the dictation and control of the President and Vice-President of said Great Northern Railway Company, acting in concert and conspiring with the owners of a majority of the stock of said railway company, as well as with the holders of a majority of the stock of the Northern Pacific Railway Company.

Prior to the organization of the Northern Securities Company, the holders of a majority of the stock of each of said railway companies, acting in concert and unlawfully conspiring with each other and the President of said Great Northern Railway Company, as well as with the prospective officers and board of directors of the Northern Securities Company, agreed with each other in the city of New York to transfer to said Securities Company, in exchange for its capital stock, a large majority of the capital stock of each of said railway companies.

It appears that the president of the Great Northern Railway Company and the owners of a majority of the stock of each of said railway companies who were conspiring together, agreed upon and dictated the terms and conditions upon which the owners thereof could exchange such stock for the capital stock of the Northern Securities Company; in other words, they dictated the terms upon which they should theoretically sell and the Northern Securities Company should buy.

The Northern Securities Company was organized for the purpose and with the intention of effecting a consolidation of a majority of the stock of said Great Northern and Northern Pacific Railway Companies, and a practical consolidation of said railway companies, their lines and properties. The Northern Securities Company was created as a means or instrument through and by which this result could be accomplished.

It appears that the compact or agreement above referred to was entered into and the Northern Securities Company organized with the design and purpose of evading and violating the constitution of the State of Washington above referred to, and for the unlawful purpose of creating a monopoly in railroad traffic therein as well as to practically consolidate the parallel and competing lines of railway owned respectively by said railway companies in said state and extending eastward therefrom to Lake Superior and the cities of St. Paul and Minneapolis in the State of Minnesota; that thereby the power to control all the railway lines of each of said companies and to fix and regulate the charges for transportation of freight and passengers was vested in a single body of men acting as the board of directors of the Northern Securities Company, and by the terms of the articles of incorporation thereof, in an executive committee of such board, as well as in the managing officers of such company; that pursuant to the conspiracy aforesaid, three-fourths of all the capital stock of each of said railway companies was transferred and delivered to the defendant the Northern Securities Company, and the stock of the latter company exchanged therefor and delivered to the holders of the stock of the Northern Pacific and Great Northern Railway Companies respectively. By execution of this plan, the individual stockholders of these two competing railway companies were to be eliminated and a single common stockholder, the Northern Securities Company, substituted. The interest of the individual stockholders in the property and franchise of the two railway companies was to terminate and to be con-

verted into an interest in the property and franchise of the Northern Securities Company. The individual stockholders were no longer to hold an interest in, or draw their dividends from the earnings of either of said railway companies, but rather from the earnings of both systems, collected and distributed by such holding corporation. In this manner, by making the stockholders of each system jointly interested in both systems, and by pooling the earnings of both systems for the benefit of the former stockholders of each, a policy was adopted not calculated to promote the interests of either system at the expense of the other, but of both at the expense of the public. All inducement for competition between such railways was thereby removed and a virtual consolidation effected, and a monopoly in railway traffic established. That the defendant the Northern Securities Company is not only exercising the right of ownership of such stock, but also dictating the management of said railway companies.

It also appears that J. J. Hill was elected and is now acting as President of the Northern Securities Company, and for many years past has also continuously been and now is the President of the said Great Northern Railway Company.

The bill of complaint also sets forth fully, the ground upon which the State claims the right to maintain this action by virtue of its sovereign powers, as well as the proprietary interest of the State in the subject matter involved for the protection of which it seeks to bring this action.

It is charged (Paragraphs 3 and 4) that the State of Washington owns upwards of two million acres of land within its limits which is near to or traversed by the railways in question the development of which is almost entirely dependent upon the transportation facilities furnished by such lines of railway; that the value of such lands will be greatly impaired by the consolidation referred to in the bill of complaint. It also appears that the State owns and maintains, the University of Washington, two hospitals for the insane within its territorial limits, three normal schools for the educa-

tion of teachers, also a State Penitentiary, a School for Defective Youth, a Reform School and Soldiers' Home; that in the management thereof the State is compelled annually to expend a large amount of money for the transportation of freight for the use of such institutions, and for the transportation of the wards or prisoners of the State consigned to said State Penitentiary, Reform School, Hospitals for the Insane and School for Defective Youth. It also appears that the people of the State are quite generally interested in agriculture and annually ship over each of said lines of railway enormous quantities of grain, fruit and other produce, and the transportation charges therefor would be seriously affected and the public generally injured by the striking down of competition between such railway companies which will result from the consolidation of the capital stock thereof, and the practical consolidation of the management of such lines of railway.

POINTS.

The jurisdiction of the court to entertain the bill of complaint here presented will be discussed under the following propositions:

I.

The State is the proper party to maintain an action in a court of competent jurisdiction, to restrain an act which is against the general public welfare and a violation of its laws.

II.

The State has a sufficient proprietary interest in the subject matter involved to maintain an action in its individual capacity to restrain the infliction of a threatened injury.

III.

This court has jurisdiction of all controversies of a civil nature brought by a State against citizens of other States, except where the same involves the enforcement of a penal statute.

IV.

The constitutional provisions of Washington are prohibitive enactments, declaratory of the public policy of the state and clearly authorize by implication, the prosecution of remedial actions to prevent a violation thereof.

V.

The railway companies and their respective stockholders upon entering the State of Washington, entered into contractural relations with the State, in and by which they not only became subject to, but assumed an obligation to comply with, its laws.

VI.

Unless jurisdiction is assumed, the State of Washington is without a forum to which the controversy involved here may be presented.

ARGUMENT.

I.

The State is the proper party to maintain an action in a Court of competent jurisdiction, to restrain an act which is against the general public welfare and a violation of its laws.

The State is defined by *Vattel* as being:

"A body politic or society of men united together for the purpose of promoting their mutual safety and advantage by joint effort of their combined strength."

This court upon deliberate argument, as early as 1795, held that a distinction did not exist between a State of a nation and the people of the State. In discussing the question, the court say:

"It is a distinction I am not capable of comprehending. By a state forming a republic, speaking of it as a moral person, I do not mean the legislature of the state, the executive of the state, or the judiciary, but all the citizens which compose that state and are, if I may so express myself, integral parts of it; altogether forming a body politic."

Penhallow vs. Doane's Administrators, 3 Dal. 93 (100).

This definition has always been recognized by Congress in the various enabling acts authorizing the people residing within specified territorial limits to organize themselves into a State.

Where irreparable injury is about to be inflicted upon a person which is injurious to and calculated to seriously affect his private interests, it is clear that it is the direct province of a court of equity to restrain such threatened injury at the suit of the individual affected wherever its jurisdiction over the person of the defendant may be obtained. It is therefore insisted that a like action brought by all the people of the State in their collective capacity in the name of the State, may not only be done for the purpose of saving a multiplicity of suits, but under an unbroken line of authorities both State and National, the authority of the Attorney General has been upheld, to institute and maintain remedial actions, either in the name of the State or in the name of his office, as the representative of the people, to restrain the commission of acts affecting the public health, or injurious to the public welfare; and particularly if such acts are specifically prohibited by law.

State of Missouri vs. Illinois & Chicago District, 180 U. S. 208.
State of Indiana vs. Ohio Oil Co., 150 Ind. 21.
Commonwealth of Kentucky vs. L. & N. Ry. Co., 97 Ky. 675.

Each of these cases were reviewed and affirmed by this Court:

Ohio Oil Co. vs. State of Indiana, 177 U. S. 190.
L. & N. Ry. Co. vs. Commonwealth of Kentucky, 161 U. S. 677.

See also in support of the above proposition:

G. C. & F. Ry. Co., vs. State, 72 Tex. 404;
Commonwealth vs. Pittsburg & C. R. Co., 58 Pa. 45;
Pennsylvania R. R. Co. vs. Commonwealth, 7 Atl. 374;
Trust Co. of Georgia vs. State of Georgia, 109 Ga. 736;
Stockton Atty. Gen'l. vs. Central R. R. Co. of New Jersey, 50 N. J. Eq. 52;

The State cannot sue by her Attorney General to redress a private wrong; that is left to the individual injured. But where the public interests are involved, and injuriously affected, the State by her Attorney General, must sue, whether there be a statute to that effect or not.

Queen Ins. Co. vs. State, 22 S. W. R. (Tex., A. D. 1893) 1052;

See also to the same effect:

People vs. Miner, 2nd Lans. 398;
Attorney General vs. Tudor Ice Co., 104 Mass. 239;
State vs. Farmers Loan & Trust Co., 81 Tex. 548;
Attorney General vs. Salem, 103 Mass. 138;
Attorney General vs. Chi. & N. W. Ry. Co., 35 Wis. 523;
People vs. Stanford, 77 Cal. 360;
Brice Ultra Vires, 506-9-31-32;
United States vs. San Jacinto Tin Co., 125 U. S. 278;

Expressing the general view of the courts and the reasons which guided them to the conclusion reached in the above entitled actions, the Supreme Court of Georgia in *Trust Co. of Georgia vs. State of Georgia, supra,* after an exhaustive review of the authorities, summarized its conclusion as follows:

"Our conclusion, therefore, both from reason and decided weight of authority is, that the State in its sovereign capacity can appeal to the courts for relief by injunction whenever either her property is involved or the public interest threatened and jeopardized by any corporation, especially one of a public nature, like a railroad company, seeking to transcend its powers and to violate the public policy of the State."

In *United States vs. San Jacinto Tin Co., supra,* this court, in holding the Attorney General of the United States is vested with authority to maintain certain actions in the name of the United States, in the absence of express statutory authority, at page 279, use the following language:

"There must then be an officer or officers of the government to determine when the United States shall sue, to decide for what it shall sue, and to be responsible that such suit shall be brought in appropriate cases."

The Supreme Court of Texas, in discussing a question where the rights of the public were violated, in *Queen Insurance Co. vs. State, supra,* say:

The Attorney General must seek the remedy authorized "in the name of the State who has such rights in her keeping. The question always is has the public been injured and should the courts redress such injuries? It is too plain for argument that the purposes and objects of the organization sued are harmful and injurious to the public. If the agreement and undertakings of all of the defendants are allowed to prevail, it will authorize the establishment of a monopoly of fire insurance in this State which includes the power to stifle

competition, impose uniform rates of such insurance, subject to the will and pleasure of the organization, inevitably resulting in an increased price to the public. Such a power in the hands of the defendants, such a monopoly is denounced by the constitution, as 'contrary to the genius of a free government,' and as declared 'shall never be allowed.' * * * It is the duty of the State to protect the public against such unlawful enterprises and to prevent their consummation."

An injunction was applied for by the Attorney General of Missouri in *Missouri vs. Illinois & Chicago District, supra.* Mr. Justice Shiras, speaking for the court therein, used the following language:

"An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor direct property rights belonging to the complainant State. But it must surely be conceded that if the health and comfort of the inhabitants of the State are threatened, the State is the proper party to represent and defend them."

In *Kentucky vs. L. &N. Ry. Co.*, and *L. & N. Ry. Co. vs. Kentucky*, the action of the Attorney General of Kentucky was upheld by the Supreme Court of that State and by this court in a case in which he applied for and obtained an injunction restraining the consolidation of parallel and competing lines of railway situated in Kentucky. In that instance, as in the case at bar, consolidation of such lines of railway was prohibited by the constitution of the State.

It must be assumed that the citizens of the State generally will suffer material injury by the striking down of competition in freight and passenger rates between competing lines of railway. This is the theory upon which the State of Minnesota was allowed to intervene by its Attorney General and file a brief in the case of *Pearsall vs. Great Northern Ry. Co.*, 161 U. S. 646, when the first attempt was made to consolidate the Great Northern and Northern Pacific Rail-

way Companies by the parties who are now, by indirect means, seeking to accomplish this same result.

To protect the rights of the general public, was the fundamental principle upon which the following cases were decided, and the right of the United States to maintain the action, sustained, viz:

United States vs. Missouri Traffic Ass., 166 U. S. 290;
United States vs. Joint Traffic Ass., 171 U. S. 505;
In Re Debs, 158 U. S. 564.

In the latter case the Court say:

"While it is not the province of the government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet whenever the wrongs complained of are such as affect the public at large, and are in respect of matter which by the constitution are entrusted to the care of the Nation and concerning which the Nation owes a duty to all citizens, of securing to them their common rights, then the mere fact that the government *has no peculiar interest in the controversy, is not sufficient to exclude it from the courts or to prevent it from taking measures therein to fully discharge those constitutional duties.*"

Like constitutional provisions, the validity of which is involved in this record, have been held to be a valid exercise of the police power of the state and consistent with the declared public policy, not only of the national government, but a large percentage of the various states, including Kentucky, Minnesota, Ohio, New Hampshire, North Dakota and Montana.

Louisville & Nashville Ry. Co. vs. Kentucky, supra, (698).

It is therefore suggested that the people of the State, acting and speaking in the name of the State by its Attorney General, may rightfully institute and maintain this action in any court of competent ju-

risdiction, to prevent a grevious injury or the continuation of such injury to the general public.

II.

The State has a sufficient proprietary interest in the subject matter involved, to maintain an action in its individual capacity to restrain the infliction of the threatened injury.

It clearly appears from the Bill of Complaint, that the State of Washington is an extensive shipper of merchandise over the parallel and competing lines of railway operated by the defendants the Northern Pacific and Great Northern Railway Companies, and is interested in a high degree in the maintenance of competition between such lines of railway in both freight and passenger traffic in Washington.

We take it to be settled, and an elementary proposition, that the creation of a monopoly in railway traffic is calculated to raise the price of transportation.

Pearsall vs. Great N. Ry. Co., 161 U. S. 646;
United States vs. Missouri Traffic Ass., **166** U. S. 290.
United States vs. Joint Traffic Ass., 171 U. S. 505;

In *Pearsall vs. Great Northern Ry. Co., supra*, this court, on page 676, use the following language:

"But the general sentiment of the public declares that such monopolies must be limited to the necessities of the case, and rebels against the attempt of one road to control all traffic between terminal points, also connected by a competing line. There are, moreover, thought to be other dangers to the moral sense of the community incident to such aggregations of wealth, which, though indirect, are even more insidious in their influence. * * * The consolidation of these two great corporations will unavoidably result in giving to the defendant a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line

of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota legislature of 1874 and 1881, undoubtedly reflect the general sentiment of the public, that their best security is in competition."

The right of the State to prevent by injunction injury to its proprietary interests, has been determined by this court.

Pennsylvania vs. Wheeling Bridge Co., 13 How. 519;

The further question was considered and determined, and the right of the State to institute and maintain such an action in this court, was affirmed therein.

It is therefore submitted, that independent of other considerations the State of Washington rightfully applies to this tribunal for leave to file its bill of complaint and *hereafter present* for adjudication the merits of the controversy.

III.

This court has jurisdiction of all controversies of a civil nature brought by a State against citizens of other States, except where the same involves the enforcement of a penal statute.

The complainant, by its Attorney General, bases its application for leave to institute this action on Section 2 of Article III. of the Federal Constitution, which, under the construction uniformly adopted, grants original jurisdiction to this court over all suits of a civil nature brought by a State against citizens of other states; also upon the Congressional enactment relating thereto, being Section 687, et seq., Revised Statutes of the United States.

Pennsylvania vs. Wheeling Bridge Co., 13 How. 518;
Wisconsin vs. Pelican Ins. Co., 127 U. S. 287.

We understand only three limitations exist to the right of a State to institute and maintain in this court an action of a civil nature against citizens of other States:

1st. The suit must involve a *bona fide* controversy between the parties.

New Hampshire vs. Louisiana, 108 U. S. 76.

2nd. The necessary parties must be before the court to give full force and effect to the decree prayed for, and such parties, under the recent holding in *Minnesota vs. Northern Securities Company*, cannot be citizens of the State instituting such litigation, even if their interests are only incidental, or involved in a collateral manner.

3rd. A penalty for the violation of a penal statute of such State cannot be recovered or enforced in an original action here.

In other words, every sovereignty must execute its own penal laws, and a suit to recover or enforce such a penalty is not a civil action within the meaning of the Constitution.

Tested by this rule and the above exceptions, it is submitted the only jurisdictional question remaining open for discussion is whether the controversy involves the execution of a penal law.

IV.

The constitutional provisions of Washington are prohibitive enactments declaratory of the public policy of the State, and clearly authorize by implication the prosecution of remedial actions to prevent a violation thereof.

The action in the case at bar is brought to restrain by injunction a violation of the continuation of a violation of the organic law of the State of Washington which is declaratory of its public policy.

Upon the authority of repeated decisions of this Court (heretofore cited), it must be conceded that the act sought to be enjoined, if not restrained, will result in irreparable injury to the complainant in its individual capacity, and to the people of the State whom the State in its representative or sovereign capacity represents. On this point see also

San Antonio Gas Co. vs. State, 22 Tex. Cir. App. 125;
Nashville, C. & T. L. Ry. Co. vs. McConnell, 82 Fed. 65, and cases therein cited.

The provisions of the Constitution, adopted prior to the entering of the defendant railway companies into the State, contained in Article XII., are as follows, to-wit:

"Sec. 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

"Sec. 16. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a competing line."

"Sec. 22. Monopolies and trusts shall never be allowed in this State, and no incorporated company, copartnership, or association of persons in this State shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. * * *"

It is insisted:

1st. That the constitutional enactments quoted are not penal, but on the other hand, are prohibitive laws, declaratory of the sound public policy of the State.

2nd. That they barely reaffirm the common law.

3rd. That restraining the defendants from consolidating the stock of the Northern Pacific and the Great Northern Railway Companies, or voting such stock when consolidated, and from consummating

any act which is in violation of such enactments, cannot be deemed to be in any sense the execution of a penal law of the State, but on the other hand, such remedy is invoked for the purpose of preventing specific injury to the State in its individual capacity, and to restrain the commission of unlawful acts inimical to the general public welfare of its citizens, productive of public mischief, and injuriously affecting their interests.

In *Moloney, Atty. Gen'l. vs. American Tobacco Co. et al.*, 72 Fed. 801 the Court refused to take jurisdiction because the suit was not of a civil nature, it being an injunction proceeding to prohibit the defendants from doing business in the state, under a statute, the violation of which was a misdemeanor. The Court say:

"This is not in its nature, a suit to recover from, or stop the continuance of an injury. It is the prosecution of an offender against a criminal statute."

That a right arising under a liability imposed by authority of the common law or the statute of a state, where the action is transitory, may be asserted and enforced outside of such state in any court having jurisdiction generally of the subject matter and the parties.

Dennick vs. Railroad Co., 103 U. S. 11.

This court, in *Wisconsin vs. Pelican Insurance Co.*, 127 U. S. 290, in discussing the rule that the courts of one country or sovereignty will not execute the penal laws of another, citing with approval

Wharton's Conflict of Laws, Sec. 833, Heid

"The rule * * * applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes, for the protection of its revenue or other municipal laws, and to all judgments for such penalties. If this were not so, all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment."

In assigning reasons in support of the judgment therein entered, Mr. Justice Gray, speaking for the court, proceeds as follows:

"Lord Kames, in his Principles of Equity, cited and approved by Mr. Justice Story in his Commentaries on the Conflict of Laws, after having said, 'The proper place for punishment is where the crime is committed, and no society takes concern in any crime but what is hurtful to itself;' and recognizing the duty to enforce foreign judgments or decrees for civil debts or damages, adds, 'But this includes not a decree for a penalty; because no court reckons itself bound to punish, or to concur in punishing, any derelict committed *extra territorium.*' "

It is clear from the excerpt quoted, the learned author therein referred to, as well as this court, intended to hold barely that the courts of one country will not lend themselves to the collection of a penalty, or to assist in punishing any derelict of another country for a criminal act committed in the latter's territory. Theoretically, every sovereign State has the power to punish its own offenders and must exercise it.

The infliction of penalties prescribed by its laws is purely local, and does not concern other states or countries, except perhaps to the extent of rendering assistance under treaties or other regulations involving extradition of criminals. But a clear distinction exists between administering punishment by a State for the violation of a penal statute, and an application in equity by such State, to restrain or prevent a violation of its public policy, evidenced by organic enactments, particularly when such violation is not only seriously injurious to the proprietary interests of the State in its individual capacity, but is naturally productive of public mischief and injurious to the general welfare of the people, which the State in its collective or sovereign capacity represents.

Differences of only a trifling nature exist among standard authorities in their definitions of prohibitive and penal statutes.

Potter's Dwarris on Statutes and Constitution, 74, defines a prohibitive statute as:

"One that forbids all actions which disturb the public repose or injury to the rights of others, or crimes or misdemeanors, or when it forbids certain actions in relation to the transmission of estates."

And a penal statute as:

"One which imposes a forfeiture or penalty for transgressing its provisions or for doing a thing prohibited."

Sutherland defines penal statutes as:

"Those by which punishments are imposed for transgressions of the laws."

Sutherland Statutory Con., Sec. 208.

This definition is sustained by,

Bay City vs. Austin, 21 Mich. 390;

Smith vs. Causey, 22 Ala. 568;

Cohen vs. Neeves, 40 Wis. 393;

Le Forest vs. Tolman, 117 Mass. 109;

Swift vs. Applebone, 23 Mich. 252;

Hathaway vs. Johnson, 55 N. Y. 93.

Other authorities modify the above definition by classing as penal, all enactments which impose by way of punishment any pecuniary mulct or damage beyond compensation for the benefit of the injured party.

Sutherland Stat. Con., Sec. 358, citing numerous authorities.

A statute whose main purpose is the inflicting of punishment on a wrongdoer is penal.

Reed vs. Northfield, 13 Pick. 94.

Adams, Admin. vs. Railroad Co., 67 Vt. 76;

Barnett vs. National Bank, 98 U. S. 555.

Where liability is imposed by statute upon a person *purely for a violation* of its provisions, the statute is penal.

Blaine vs. Curtis, 59 Vt. 120.

But where it is declaratory of common law right, coupled with a means enacted for its enforcement, giving a remedy for an injury against the person by whom the act is committed and limiting the recovery to the amount of loss sustained, it is a remedial statute.

Alysworth vs. Curtis, 61 Am. St. Rep. (R. I.) 788.

This court, after an exhaustive analysis of the difference between penal laws and remedial statutes, in defining a penal law, uses the following language, which we not only insist reflects the rule uniformly adopted elsewhere, but is so clear and comprehensive as to be decisive of the point contended for, viz, that the Washington constitutional enactments are not in any sense penal:

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the State, and which, by the English and American Constitutions, the Executive of the State has the power to pardon. Statutes giving a private action against a wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal. * * * The test whether a law is penal in the strict and primary sense is, whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone."

Again in the same case, Mr. Justice Gray, speaking for the court, says:

"The question whether the statute of one state, which in some respects may be called penal, *is a penal law in the international sense,* so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish offenses against *the public justice* of the state, or to afford a *private remedy to the person* injured by the wrongful act."

Huntington vs. Attrell, 146 U. S. 657.

A distinction existing between statutes penal in a certain sense, but not penal in an international sense, is well illustrated in other cases than the one last above quoted.

An action brought by a creditor of a foreign corporation to enforce the statutory liability of stockholders, does not rest upon the principle that the plaintiff is seeking to enforce a statute for the recovery of a penalty, since the liability "is not penal in the international sense," but arises upon the statute as an implied obligation which the defendant assumed when he purchased his stock.

Marshall vs. Sherman (N. Y.) 34 L. R. A. 767, citing *Cochran vs. Wiechers,* 119 N. Y. 399.

In *Eds vs. Orcutt,* 79 Mo. App. 520, the court clearly draws the distinction between a statute penal in its primary sense and one penal in its interstate or international sense.

The Supreme Court of Montana, in the case of *Manhattan Trust Co. vs. Davis,* 23 Mont. 273 (280), recognized the distinction pointed out by this court in the *Huntington* case between statutes which are to be considered penal in the sense that they should be strictly construed, and yet not penal in the sense that they cannot be enforced in a foreign state or country.

The Supreme Court of Rhode Island, in the case of *Aylsworth vs. Curtis, supra,* decided in 1896, also adopted the definition of a penal statute in the international sense, which was given by this court in *Huntington vs. Attrell, supra.*

It is insisted, the prohibitory provisions of the State of Washington are not in any sense penal from any standpoint, whether used in the strict or in the international sense. A penalty for the violation of such provisions was not provided or contemplated, and a punishment is not now sought to be inflicted in this proceeding. The defendants have not committed a crime or an offense of any

character against the public, in a sense bringing the same within the power of the Executive to pardon. The acts complained of, committed by the defendants or their representatives, on the other hand, are violations of the declared public policy of the State, and injurious to the State and the public generally in the sense of being inconsistent with, injurious to, and antagonistic to their best interests. The railroad companies defendant are privileged to do business in and associate with the people of Washington, on a basis prescribed by its laws for the government and welfare of its people. For any violation of such rules of policy declared by the organic law, an appropriate civil remedy is implied; and it is insisted this remedy may be invoked, in any court having jurisdiction in civil cases, wherever the defendant may be found, either within or without the State. It is again emphasized that this proceeding is not brought to punish or even to recover damages for a violation of the laws of Washington, but rather to restrain a continuation of a violation of such enactments.

That a remedy exists in favor of the State in the nature of an injunction to restrain the commission by corporations and others, of acts adverse to public policy, and particularly when in violation of prohibitory laws, we submit, has been established by authorities cited in Paragraph I. of this brief.

In this connection the attetnion of the court is again barely called to the cases therein cited, where the validity of statutes was before the court of a nature identical, or substantially identical with the provisions of the Constitution of Washington presented in the case at bar.

L. & N. Ry. Co. vs. Kentucky, 161 U. S. 703;
Stockton, Atty. General vs. C. R. R. Co., 50 N. J. Eq .52;

And the further decisions of the Court in,

Attorney General vs. Chicago &c. Ry. Co., 35 Wis. 425;
Columbia Athletic Club vs. State of Indiana, 143 Ind. 98.

In the latter case the court enjoined the use of and appointed a receiver for a building which was about to be used as a means or instrument in which an offense against the public policy of the laws of the State of Indiana could be consumated. The court therein, at page 103, quote with approval from the well considered case of *Attorney General vs. Chicago &c. Ry. Co., supra,* where that eminent jurist, Chief Justice Ryan, speaking for the Supreme Court of Wisconsin, in turn quotes with approval from *Brice, Ultra Vires,* p. 526, as follows:

"Under many circumstances, the court of chancery has, on public grounds, jurisdiction to prevent corporations acting in various ways, or contrary to the intent for which they have been created. The public, however, must be represented in all applications relating to such matters, and this is done by the intervention of the attorney general. No single person, whether a member of the corporation or not, is able on his own account, and of his own motion, to call upon the court to interfere for his special protection. The wrong he complains of is not confined to himself; no right or privilege peculiar to himself is violated; the wrongs inflicted and the rights invaded affect the public, and the public, consequently, must be a party to the proceedings. The occasions upon which the court will exercise jurisdiction to restrain the doing of acts of this kind, seem to fall into the three following heads: * * * (1). When a corporation is abusing powers given for public purposes; (2) or is committing a breach of trust; (3), or is acting adversely to public policy."

V.

The railway companies and their respective stockholders upon entering the State of Washington, entered into contractual relations with the State, in and by which they not only became subject to, but assumed an obligation to comply with, its laws.

"The principle that the right of a foreign corporation to engage in business within a State other than that of its creation, depends

solely upon the will of such other State, has long been settled, and many phases of its application have been illustrated by the decisions of this court."

Hooper vs. California, 155 U. S. 652.

The rule is settled that the public statutes of a State creating and relating to corporations, become and are a part of the charter created by such State, and binding as contracts, not only upon the company so created, but its stockholders.

Supreme Lodge, K. P. vs. Weller, 25 S. E. (Vir.) 891 and authorities cited.

People vs. Chicago Gas Co., 22 N. E. (Ill.) 798.

The Supreme Court of Illinois in the latter case, upon this point, say:

"The charter of a corporation does not consist of the articles of association alone, but of such articles taken in connection with the law under which the organization takes place. The provisions of the law enter into and form a part of the charter."

It is equally well settled as applied to corporations organized outside of the State, that where their stockholders, in the charter or articles of incorporation, particularly specify that the purposes of the corporation shall be the doing of certain business outside the limits of the state and within the limits of a sister state, then such corporation and its stockholders, as a matter of law, enter into contractual relations with such outside state and the people thereof, with whom such corporation contemplates doing business, to comply with and obey the laws of such state. This court has recently expressly held that the laws of the latter state enter into and form a part of the charter contract and binding upon the stockholders of the corporation organized elsewhere, for the purpose, in part, of doing business in such state.

Penney et al. vs. Nelson, Advance Sheets Op. of U. S. Supreme Court, Oct. Term, 1901, No. 3, Page 52.

In holding that the stockholders of a Colorado corporation, which was organizing for the purpose of doing business in California were liable in a civil action upon the stockholders liability, authorized and provided for by the laws of California, Mr. Justice Brewer, speaking for this Court, used the following langugae:

"As, then a corporation can have no legal existence outside of the state in which it is incorporated, the contract of the stockholders with one another, by which the corporation is created, is presumed to have been made with reference to the laws of that state, nothing being said in the charter to the contrary. But as comity permits a corporation to enter another state and do business therein, it is competent for the stockholders in making their charter to contract with reference to the laws of a state in which they propose the corporation shall do business. And in this case the stockholders in their charter specified that the purpose of the incorporation was partly business beyond the limits of Colorado ,and that the principal part of such oustide business should be carried on in California. Not content to rely upon the general authority which by the rules of comity the Colorado corporation would have to enter California and transact business therein, they in terms set forth that a part of the purpose of the incorporation was the transaction of business by the corporation in California. Now, when they in terms specified that they were framing a corporation for the purpose of having that corporation do business in California, is it not clear that they were contracting with reference to the laws of that state? Contracting with reference to the laws of that state they must be assumed to know the provisions of those laws; that by them a personal liability was cast upon the stockholders in corporations formed under the laws of the state, and that that same liability was also imposed upon the stockholders of corporations formed under the laws of other states and doing business within Cali-

fornia. *How can it be said that those laws do not enter into the contract* and control as to all business done in pursuance of that contract within the limits of California? Suppose these same stockholders in Colorado had formed a partnership with the express intent of carrying on business in California, would not that expressed intent be a clear reference to the laws of Califorina and an incorporation of those laws into the liabilities created by the partnership business in California? And if this rule obtains as to contracts of partners between themselves, why not also as to contracts of stockholders between themselves in forming a corporation?

* * * * * * * *

"All that we here hold is that when a corporation is formed in one state, and by the express terms of its charter it is created for the purpose of doing business in another state, and business is done in that state, it must be assumed that the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business."

Both the Great Northern and the Northern Pacific Railway Companies were organized for the express purpose of owning, leasing and managing a line of railway from Minnesota, extending westward across North Dakota, Montana, Idaho and the State of Washington. It is insisted that each of such railway companies and their stockholders, by the purchase and act of operating a line of railway therein, entered into a contract with the State of Washington, to refrain from creating a monopoly, such as is prohibited by Section 22 of Article XII. of the Constitution, or to consolidate in single hands, "its stock, property or franchise with any other railroad corporation owning a competing line," as prohibited by Section 16 of said Article, or "to combine to make any contract with * * * any common carrier, by which combinnation or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying, as prohibited by Section 14 of said Article.

The defendant, the Northern Securities Company, as a stockholder of each of said railway companies (the other defendants herein), under the rule settled as we have seen, became a party to such contract and thereby agreed to refrain from the commission of the acts complained of in this bill of complaint. It is therefore insisted the complainant, the State of Washington, is warranted in presenting its complaint to this court, and basing its cause of action for the relief demanded, *upon the contract entered into between each of the defendants* and said State and its people, in and by which the defendants agreed to refrain from the commission of the acts complained of.

The injunction prayed for is barely an application (looking to the enforcement of a contract), for an order restraining the defendants from the continuation of a violation of the laws of the State of Washington, and from reaping the fruit of their illegal acts by carrying out of a plan seriously injurious to the property and other rights of the state in its individual capacity and of the people of the state collectively.

VI.

Unless jurisdiction is assumed, the State of Washington is without a forum to which the controversy involved here may be presented.

Under the authority of the recent decision of this court in *State of Minnesota vs. Northern Securities Company,* it is clear that the Northern Pacific and Great Northern Railway Companies are necessary parties defendant, not only in this, but any other court having equitable jurisdiction, in an action brought by the State of Washington against the Northern Securities Company.

This rule bars the State of Washington from maintaining such an action in the courts of New Jersey, for the reason that said railway companies are not within the state for the purpose of giving the court jurisdiction over them.

An action against the Northern Securities Company will not lie in the State of Washington, for the reason that the courts are powerless to obtain jurisdiction over its person. The company is not doing business in that state, or the owner of any property therein, neither has it appointed an agent upon whom process may be served.

Careful inquiry has been made, and it has been found that the State of New York is the only state in the Nation, in which each of said parties defendants has designated an agent upon whom court process may be served, and it is clear that such an action against the defendants (all being non-residents of the State of New York) cannot be maintained therein, under Section 1780 of the New York Code of Civil Procedure, which provides that:

"An actio nagainst a foreign corporation may be maintained by another foreign corporation or by a non-resident in one of the following cases only:

"1st. Where the action is brought *to recover damages* for the breach of a contract made within the state or relating to property situated within the state at the time of making thereof.

"2nd. Where it is brought to recover real property situated within the state, or a chattel, which is replevied within the state.

"3rd. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state."

Under the settled construction given to the Judiciary Acts by this Court, the Circuit Courts of the United States are barred from entertaining a civil action brought by a state, except the suit be one arising under a Federal statute, the Constitution of the United States, or a treaty made therewith.

Ames vs. Kansas, 111 U. S. 449.
Posta. Telegraph Co. vs. Alabama, 155 U. S. 482.

It follows that the State of Washington is barred from presenting the issues here involved to any court in the United States, unless this

court shall construe Section 2 of Article III. of the Federal Constitution, consistent with the broad interpretation which we believe, the organizers of the government intended should be placed upon it. Intending to avoid the pitfalls incident to a fear of local prejudice in the courts, the framers of the Constitution, in plain language designated this court as the forum by which the rights of sovereign states in controversies against citizens of other states, may be determined. The contingency clearly pointed out by Mr. Justice Harlan, and concurred in by Mr. Justice Brewer, in their dissenting opinion in *California vs. Southern Pacific Ry. Co.*, 157 U. S. 270, is here presented. The learned justices dissented from the opinion therein expressed by a majority of the court and which was reaffirmed in *Minnesota vs. Northern Securities Co.*, upon the ground that the construction therein given to Section 2 of Article III. of the Constitution might sometime, in the future, bar a state from a forum in which its controversies could be litigated.

Happily a marked distinction exists between *California vs. Southern Pacific Ry. Co.*, and *Minnesota vs. Northern Securities Company*, and the case at bar, and we respectfully submit the rule should not be extended by construction.

On the other hand, our contention is, that the rule has been carried too far, and if the tremendous and ever increasing burdens placed upon this court shall become too great, Congress may be relied upon to add further relief.

We trust the language of Chief Justice Marshall will recur to the court:

"As this court has never grasped an ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon it."

Fisher vs. Cockerel, 5 Peters 259.

This argument has been confined as closely as possible to the question of jurisdiction. And we understand it must be assumed

Pc. Ps. Greg. P.

FILED
NOV 11 1902
JAMES H. McKENNEY,
Clerk.

Answer of Northern Securities Co.

Supreme Court of the United States.

Filed Nov. 11, 1902.

THE STATE OF WASHINGTON,

Complainant,

vs.

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Defendants.

The answer of the defendant, the Northern Securities Company, to the Bill of Complaint of the State of Washington.

GEO. B. YOUNG, and
JOHN W. GRIGGS,
Solicitors and Counsel for Defendant,
Northern Securities Company.

Supreme Court of the United States.

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The answer of the defendant, the Northern Securities Company, to the Bill of Complaint of the State of Washington.

This defendant, reserving to itself all right of ex

ception to said bill of complaint, for answer thereto, says:

I.

It admits the matters stated in the first and second subdivisions of said bill.

II.

It admits that large quantities of land were granted to the complainant by the acts of Congress mentioned in subdivision III-A of said bill, for the purposes in said acts set forth; but it knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise, whether any, and, if any, what quantity of said granted lands are left or undisposed of, or as to the value, if any, of said lands, or as to the location thereof, or whether much or any of said lands are located in the territory traversed by either of the defendant railway companies, or are vacant or unsettled, or as to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition over the lines of the defendant railway companies, or upon the construction of lines of railway by either of said companies.

It admits that each of said railway companies has heretofore, and as the circumstances of each case warranted, from time to time, built or caused to be built spur or branch lines into territory adjacent to its railway, as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that

the construction of such spur or branch lines has been or will be prevented or lessened or deferred, or in any way affected, by the formation of this defendant. And it denies that the matters, or any of them, alleged in said bill, have prevented or hindered, or will, in the future, prevent or hinder the construction, by the complainant, or by any person or corporation thereto authorized by complainant, of any line or lines of railroad that the complainant may deem necessary or advantageous to bring its lands into market and to secure their settlement and occupation.

And it denies each and every averment in said subdivision III-A in said bill contained not herein expressly admitted.

III.

It admits the complainant's ownership, maintenance and operation of the institutions named in subdivision III-B of said bill, and that some portion of the supplies for some of said institutions requires to be and is in fact carried over the lines of one or the other of the defendant railway companies.

As to the other matters stated in said subdivision III-B, this defendant knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

IV.

It admits the making of large shipments of wheat and other products, merchandise and timber, from and to the places mentioned in subdivision IV of said bill.

It denies that competition between the defendant railway companies for traffic between said places, or any of them, was, prior to the organization of this defendant, any sharper or more active, or more productive of lower rates for freight or passengers, than it has been at all times since such organization and still is; and denies that such rates have been, at any time since the organization of this defendant, or now are, or will be in the future, any higher than if this defendant had not been formed. On the contrary, it says that since the formation of this defendant such rates have already been largely reduced, and are now, and will continue to be, lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

V.

It admits the matters stated in subdivision V of said bill, except that it denies that the Great Northern Railway Company is, or ever has been, subject to the constitution, laws, regulations or provisions of the State of Washington, in respect of its internal organization or its interstate or international traffic, or in respect of the right of any person, or any corporation (not being a corporation created by

the State of Washington), to own or hold shares of its capital stock; and denies that the Great Northern Railway Company has ever constructed any lines of railway in the States of Washington or Minnesota except the line from St. Cloud to Hinckley, mentioned in said bill; and denies that it operates the Eastern Railway of Minnesota by virtue of stock ownership, or otherwise than under and by virtue of a lease thereof from its owner, the Eastern Railway Company of Minnesota.

And it denies that Jacob H. Schiff was, on the thirteenth day of November, 1901, or at any time since has been, a director of said Great Northern Railway Company; or that William P. Clough was at the time of the filing of said bill, or at any time since, a director or officer thereof; and denies that James J. Hill mentioned in said bill, was, on November thirteenth, 1901, or that he ever has been, the owner of, or in possession or control of, or had, on said day, or at any time, subject to his direction or disposition, more than a majority or more than a portion far less than a majority, of the capital stock of said Great Northern Railway Company.

VI.

It admits the averments of subdivision VI of said bill.

VII.

It admits the incorporation and existence of the Northern Pacific Railway Company and its opera-

tion of railways in the State of Washington, but denies its subjection to the constitution, laws, regulations or provisions of said State in respect of its internal organization, or the qualification of its shareholders, or the right of any person or corporation (not being a corporation of the State of Washington) to become an owner and holder of shares of its capital stock, or in respect of its interstate or international traffic.

It admits that the powers of that company are delegated to and exercised by a Board of fifteen Directors, and denies that James J. Hill, E. H. Harriman, H. McK. Twombly, Samuel Rae and William Rockefeller, or any of them, were, in the month of April, 1901, members of the Board of Directors of said company; and denies that James J. Hill was a member of said Board at the time of the filing of said bill.

It admits that on the thirteenth day of November, 1901, the total capital stock of the Northern Pacific Railway Company consisted of Eighty Millions of common stock and Seventy-five Millions of preferred stock, the latter of which was subject to retirement as provided by the Articles of Incorporation and the agreement under which the same was issued. It denies that on the thirteenth day of November, 1901, or at any time, J. Pierpont Morgan, mentioned in said bill, or said Morgan and other persons acting with him, owned or had in their possession or held under or subject to their control or disposition, upwards of eighty-five per cent or more than forty-eight per cent of the capital

stock of said Northern Pacific Railway Company, then outstanding.

It admits the insolvency of the Northern Pacific Railroad Company and the appointment of receivers thereof; and the acquisition of its property by the defendant, the Northern Pacific Railway Company.

It admits that the cities and towns in the State of Washington named in subdivision VII of said bill are points on the lines of each of the defendant railway companies; but it denies that the lines of said railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent, prior to the formation of this defendant, than they have at all times done since the formation of this defendant and will continue to do in the future.

It denies that the lines of the defendant railway companies between the State of Washington and St. Paul and Minneapolis, in the State of Minnesota, were or are parallel to each other, or that they have ever been competing lines, except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that the defendant railway companies have, at any time, competed with each other for passenger or freight traffic in any other or different manner, or to any greater extent, than they have continuously done since the formation of this defendant and will continue to do in the future.

It admits that the lines of the defendant railway companies are the only lines of any single railway company running East and West entirely across the State of Washington, and the only lines running East and West between Spokane and Seattle; also the only lines of any single railway company traversing, East and West, all the northern tier of states of the United States west of the Mississippi River; but it denies that said lines are the only lines connecting such territory, or territory tributary thereto by rail with the Pacific Ocean.

And it denies each and every statement in subdivision VII of said bill contained not hereinbefore expressly admitted.

VIII.

It admits that in the spring of the year 1901, the Northern Pacific and Great Northern Railway Companies purchased about ninety-eight per cent of the total shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, and that each of said defendant railway companies thereupon became the owner of and now owns, severally, and in its own sole right, one-half of the shares so purchased, and that said defendant railway companies paid for said shares with their joint bonds, of the description and amount, stated in said bill.

It denies that said bonds were issued by either of said companies in contemplation of placing their lines under a common source of control; and denies that joint ownership or control of the said Chicago,

Burlington & Quincy Railroad Company has ever been vested in or exercised by the said defendant railway companies.

And it denies each averment in said subdivision VIII of said bill contained not hereinbefore expressly admitted.

IX.

It admits that this defendant is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey; that it was organized on the thirteenth day of November, 1901, with its principal office located in the City of Hoboken, State of New Jersey, and that its Articles of Incorporation are as set forth in said bill.

It denies that this defendant was organized for any other purposes than those set forth in its said Articles of Incorporation.

It admits the fact and the date of the retirement of the preferred stock of the Northern Pacific Railway Company, pursuant to a resolution of its Board of Directors, in conformity with the Articles of Incorporation of said company and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of seventy-five millions of the bonds of said company, convertible—and which have been converted—into an equal amount of the

common stock of said company, and that a preferential right to purchase said bonds was given the common stockholders of said company in proportion to their holdings of such common stock.

It admits that after the formation of this defendant, and on November twenty-second, 1901, this defendant did offer to the shareholders of the Great Northern Railway Company to purchase such of their shares as should be offered within sixty days from that date, at $180 per share, and to pay therefor in shares of its own capital stock at par.

Except as aforesaid, it says that this defendant has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares.

It says that it has also purchased for cash a large amount of the shares of the defendant railway companies, and of other companies.

It cannot say whether it will at any time acquire all the shares of either of said companies, or how much thereof it will acquire, since such acquisition will depend, among other contingencies, on the willingness of the holders of said shares to sell them on terms which this defendant may be willing to accept.

Except as hereinbefore stated or admitted, it denies each and every matter alleged in subdivision IX of said bill.

X.

It denies each and every allegation of subdivision X of said bill.

XI.

It denies each and every allegation of subdivision XI of said bill.

XII.

It denies each and every allegation of subdivision XII of said bill, except that it admits that upon the transfer to this defendant of any shares in either of the defendant railway companies, the shares so transferred were to and did become the absolute property of this defendant, in its own sole right, and the person making such transfer was to and did thereby cease to be a shareholder of or have any interest in such company by reason of such shares.

XIII.

It admits that its articles of association contain the provisions stated in subdivision XIII of said bill. It denies that there was ever any agreement between said James J. Hill and J. Pierpont Morgan, or between them or either of them and any other person, that the first Board of Directors of this defendant should be named by said J. Pierpont Morgan, or that only such persons shoud be designated members of such Board as were first approved by said James J. Hill; and it denies that said James J. Hill was elected or designated president of this defendant in furtherance of any such plan.

It admits that the first Board of Directors of this defendant was elected on November fifteenth, 1901, and was composed of the persons named in said bill,

and that said Board elected the Executive Officers of the defendant named in said bill; and that James J. Hill and E. T. Nichols were at that date, and now are, respectively, the President and the Secretary of said Great Northern Railway Company.

But it denies that William P. Clough was, at the date of said election, an officer of the Great Northern Railway Company.

It denies that said Board of Directors was designated by J. Pierpont Morgan and James J. Hill, or that their election was a part of the pretended plan and conspiracy, or was had pursuant to the pretended illegal agreement or scheme, alleged in said bill.

It denies that said James J. Hill and his associate directors and officers of this defendant own or control a majority of the capital stock of this defendant, or that this defendant has, at any time, in any manner whatever, dictated the policy or management of either of the defendant railway companies, or has ever directed or managed the business or practice of either of said companies, or determined or enforced freight or passenger rates on any of the lines of either of said companies in the State of Washington, or the manner or means of handling freight or passenger business of either of said companies on either of said lines of railway, or that it has any purpose of so doing.

It admits that it has no agent or representative in the State of Washington on whom any legal process may be served, and that it owns no property of

any nature whatever situated in the State of Washington.

It denies that any of the matters alleged in subdivision XIII of said bill tend to or do create a monopoly in railway traffic in the State of Washington, or elsewhere, or tend to or do deprive said State or its citizens of the privilege of competition in fixing charges or rates of transportation between stations upon the lines of railway of the defendant railway companies within said state.

And it denies each and every averment in said subdivision XIII of said bill contained not hereinbefore expressly admitted.

XIV.

It admits that Sections 14 and 16 of Article XII of the Constitution of Washington are as stated in said bill, but says that what professes to be a statement of section 22 of said Article is garbled and imperfect.

It denies that in the organization of this defendant, the promoters thereof had any of the purposes, objects or designs alleged in said bill, and it denies that this defendant, or either of the defendant railway companies, or their stockholders, directors, executive committee, officers, agents or representatives, have at any time had or now have any of the purposes, intents or designs charged in said subdivision or elsewhere in said bill; and denies that they or any of them have done any of the things alleged in said subdivision; and denies that this

defendant is a carrier or a railroad company, within the meaning of the Constitution or laws of the State of Washington, or of any other state; or that the acts complained of in said bill or any of them violate or evade the laws of the land or the settled public policy or laws of the State of Washington.

This defendant says that it is the owner and holder of a large amount of property and stocks in other corporations than the defendant railway companies.

And it denies each and every matter in subdivision XIV of said bill, except as is hereinbefore admitted.

XV.

It denies each and every matter and thing alleged in said bill not hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained.

NORTHERN SECURITIES COMPANY,

By GEO. B. YOUNG and
JOHN W. GRIGGS,
Solicitors.

JOHN W. GRIGGS,
GEO. B. YOUNG,
Counsel.

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NOV 11 1902
JAMES H. McKENNEY,
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Answer of Great Northern Ry.

Supreme Court of the United States.

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This defendant, reserving to itself all right of ex

ception to said bill of complaint, for answer thereto, says:

I.

It admits the matters stated in the first and second subdivisions of said bill.

II.

It admits that large quantities of land were granted to the complainant by the acts of Congress mentioned in subdivision III-A of said bill, for the purposes in said acts set forth; but it knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise, whether any, and, if any, what quantity of said granted lands are left or undisposed of, or as to the value, if any, of said lands, or as to the location thereof, or whether much or any of said lands are located in the territory traversed by either of the defendant railway companies, or are vacant or unsettled, or as to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition over the lines of the defendant railway companies, or upon the construction of lines of railway by either of said companies.

It admits that each of said railway companies has heretofore, and as the circumstances of each case warranted, from time to time, built or caused to be built spur or branch lines into territory adjacent to its railway, as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that

the construction of such spur or branch lines has been or will be prevented or lessened or deferred, or in any way affected, by the formation of the Northern Securities Company. And it denies that the matters, or any of them, alleged in said bill, have prevented or hindered, or will, in the future, prevent or hinder the construction, by the complainant, or by any person or corporation thereto authorized by complainant, of any line or lines of railroad that the complainant may deem necessary or advantageous to bring its lands into market and to secure their settlement and occupation.

And it denies each and every averment in said subdivision III-A in said bill contained not herein expressly admitted.

III.

It admits the complainant's ownership, maintenance and operation of the institutions named in subdivision III-B of said bill, and that some portion of the supplies for some of said institutions requires to be and is in fact carried over the lines of one or the other of the defendant railway companies.

As to the other matters stated in said subdivision III-B, this defendant knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

IV.

It admits the making of large shipments of wheat and other products, merchandise and timber, from and to the places mentioned in subdivision IV of said bill.

It denies that competition between the defendant railway companies for traffic between said places, or any of them, was, prior to the organization of the Northern Securities Company, any sharper or more active, or more productive of lower rates for freight or passengers, than it has been at all times since such organization and still is; and denies that such rates have been, at any time since the organization of said company, or now are, or will be in the future, any higher than if said company had not been formed. On the contrary, it says that since the formation of said company such rates have already been largely reduced, and are now, and will continue to be, lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

V.

It admits the matters stated in subdivision V of said bill, except that it denies that this defendant is, or ever has been, subject to the constitution, laws, regulations or provisions of the State of Washington, in respect of its internal organization or its interstate or international traffic, or in respect of the right of any person, or any corporation (not being a corporation created by the State of Wash-

ington), to own or hold shares of its capital stock; and denies that it has ever constructed any lines of railway in the States of Washington or Minnesota except the line from St. Cloud to Hinckley, mentioned in said bill; and denies that it operates the Eastern Railway of Minnesota by virtue of stock ownership, or otherwise than under and by virtue of a lease thereof from its owner, the Eastern Railway Company of Minnesota.

And it denies that Jacob H. Schiff was, on the thirteenth day of November, 1901, or at any time since has been, a director of this defendant, or that William P. Clough was at the time of the filing of said bill, or at any time since, a director or officer thereof; and denies that James J. Hill mentioned in said bill, was, on November thirteenth, 1901, or that he ever has been, the owner of, or in possession or control of, or had, on said day, or at any time, subject to his direction or disposition, more than a majority or more than a portion far less than a majority, of the capital stock of this defendant.

VI.

It admits the averments of subdivision VI of said bill.

VII.

It admits the incorporation and existence of the Northern Pacific Railway Company and its operation of railways in the State of Washington, but denies its subjection to the constitution, laws, regulations or provisions of said State in respect of its

internal organization, or the qualification of its shareholders, or the right of any person or corporation (not being a corporation of the State of Washington) to become an owner and holder of shares of its capital stock, or in respect of its interstate or international traffic.

It admits that the powers of that company are delegated to and exercised by a Board of fifteen Directors, and upon information and belief denies that James J. Hill, E. H. Harriman, H. McK. Twombly, Samuel Rae and William Rockefeller, or any of them, were, in the month of April, 1901, members of the Board of Directors of said company or that James J. Hill was a member of said Board at the time of the filing of said bill.

It admits that on the thirteenth day of November, 1901, the total capital stock of the Northern Pacific Railway Company consisted of Eighty Millions of common stock and Seventy-five Millions of preferred stock, the latter of which was subject to retirement as provided by the Articles of Incorporation and the agreement under which the same was issued. It denies upon information and belief that on the thirteenth day of November, 1901, or at any time, J. Pierpont Morgan, mentioned in said bill, or said Morgan and other persons acting with him, owned or had in their possession or held under or subject to their control or disposition, upwards of eighty-five per cent or more than forty-eight per cent of the capital stock of said Northern Pacific Railway Company, then outstanding.

It admits the insolvency of the Northern Pacific

Railroad Company and the appointment of receivers thereof; and the acquisition of its property by the defendant, the Northern Pacific Railway Company.

It admits that the cities and towns in the State of Washington named in subdivision VII of said bill are points on the lines of each of the defendant railway companies; but it denies that the lines of said railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent, prior to the formation of the Northern Securities Company, than they have at all times done since the formation thereof and will continue to do in the future.

It denies that the lines of the defendant railway companies between the State of Washington and St. Paul and Minneapolis, in the State of Minnesota, were or are parallel to each other, or that they have ever been competing lines, except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that the defendant railway companies have, at any time, competed with each other for passenger or freight traffic in any other or different manner, or to any greater extent, than they have continuously done since the formation of the Northern Securities Company and will continue to do in the future.

It admits that the lines of the defendant railway companies are the only lines of any single railway

company running East and West entirely across the State of Washington, and the only lines running East and West between Spokane and Seattle; also the only lines of any single railway company traversing, East and West, all the northern tier of states of the United States west of the Mississippi River; but it denies that said lines are the only lines connecting such territory, or territory tributary thereto by rail with the Pacific Ocean.

And it denies each and every statement in subdivision VII of said bill contained not hereinbefore expressly admitted.

VIII.

It admits that in the spring of the year 1901, the Northern Pacific and Great Northern Railway Companies purchased about ninety-eight per cent of the total shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, and that each of said defendant railway companies thereupon became the owner of and now owns, severally, and in its own sole right, one-half of the shares so purchased, and that said defendant railway companies paid for said shares with their joint bonds, of the description and amount, stated in said bill.

It denies that said bonds were issued by either of said companies in contemplation of placing their lines under a common source of control; and denies that joint ownership or control of the said Chicago, Burlington & Quincy Railroad Company has ever

been vested in or exercised by the said defendant railway companies.

And it denies each averment in said subdivision VIII of said bill contained not hereinbefore expressly admitted.

IX.

It admits that the Northern Securities Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey; that it was organized on the thirteenth day of November, 1901, with its principal office located in the City of Hoboken, State of New Jersey, and that its Articles of Incorporation are as set forth in said bill and says that said company was organized, to the best of defendant's belief, for the purposes set forth in its said Articles of Incorporation and for no other purpose whatever.

It admits the fact and the date of the retirement of the preferred stock of the Northern Pacific Railway Company, pursuant to a resolution of its Board of Directors, in conformity with the Articles of Incorporation of said company and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of seventy-five millions of the bonds of said company, convertible—and which have been converted—into an equal amount of the common stock of said company, and that a prefer-

ential right to purchase said bonds was given the common stockholders of said company in proportion to their holdings of such common stock.

It admits that after the formation of the Northern Securities Company and on November twenty-second, 1901, that company did offer to the shareholders of this defendant to purchase such of their shares as should be offered within sixty days from that date, at $180 per share, and to pay therefor in shares of its own capital stock at par.

Except as aforesaid, it says that the Northern Securities Company, to the best of this defendant's knowledge and belief, has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares.

It says that said company has also purchased for cash, as this defendant is informed and believes, a large amount of the shares of the defendant railway companies, and of other companies.

It has no knowledge or information, and cannot set forth as to its belief or otherwise concerning any acquisition which the Northern Securities Company may hereafter make of the shares of either of the defendant railway companies.

Except as hereinbefore stated or admitted, it denies each and every matter alleged in subdivision IX of said bill.

X.

It denies each and every allegation of subdivision X of said bill.

XI.

It denies each and every allegation of subdivision XI of said bill except that it admits and avers upon information and belief that every transfer of shares of either of the defendant railway companies by the holder thereof to the Northern Securities Company was absolute and such holder thereupon ceased to be such or to have any interest in the shares so transferred or to have any interest in such railway company.

XII.

It denies each and every allegation of subdivision XII of said bill.

XIII.

It admits that the articles of association of the Northern Securities Company contain the provisions stated in subdivision XIII of said bill. It denies on information and belief that there was ever any agreement between said James J. Hill and J. Pierpont Morgan, or between them or either of them and any other person, that the first Board of Directors of said company should be named by said J. Pierpont Morgan, or that only such persons should be designated members of such Board as were first approved by said James J. Hill or that said James J. Hill was elected or designated president of said company in furtherance of any such plan.

It admits that the first Board of Directors of the Northern Securities Company was elected on No-

vember fifteenth, 1901, and was composed of the persons named in said bill, and that said Board elected the Executive Officers of said company named in said bill; and that James J. Hill and E. T. Nichols were at that date, and now are, respectively, the President and the Secretary of this defendant.

But it denies that William P. Clough was, at the date of said election, an officer of the defendant.

It denies on information and belief that said Board of Directors was designated by J. Pierpont Morgan and James J. Hill, or that their election was a part of the pretended plan and conspiracy, or was had pursuant to the pretended illegal agreement or scheme, alleged in said bill.

It denies that said James J. Hill and his associate directors and officers of the Northern Securities Company own or control a majority of the capital stock of said company, or that said company has, at any time, in any manner whatever, dictated the policy or management of either of the defendant railway companies, or has ever directed or managed the business or practice of either of said companies, or determined or enforced freight or passenger rates on any of the lines of either of said companies in the State of Washington, or elsewhere, or the manner or means of handling freight or passenger business of either of said companies on any of their lines of railway, or that, so far as this defendant knows or believes, it has any purpose of so doing.

It admits that the Northern Securities Company has no agent or representative in the State of Wash-

ington on whom any legal process may be served, and owns no property of any nature whatever situated in the State of Washington.

It denies that any of the matters alleged in subdivision XIII of said bill tend to or do create a monopoly in railway traffic in the State of Washington, or elsewhere, or tend to or do deprive said State or its citizens of the privilege of competition in fixing charges or rates of transportation between stations upon the lines of railway of the defendant railway companies within said state.

And it denies each and every averment in said subdivision XIII of said bill contained not hereinbefore expressly admitted.

XIV.

It admits that Sections 14 and 16 of Article XII of the Constitution of Washington are as stated in said bill, but says that what professes to be a statement of section 22 of said Article is garbled and imperfect.

It denies on information and belief that in the organization of the Northern Securities Company the promoters thereof had any of the purposes, objects or designs alleged in said bill, and it denies that the Northern Securities Sompany, or either of the defendant railway companies, or their stockholders, directors, executive committee, officers, agents or representatives, have at any time had or now have any of the purposes, intents or designs charged in said subdivision or elsewhere in said

bill; and denies that they or any of them have done any of the things alleged in said subdivision; and denies that the Northern Securities Company is a carrier or a railroad company, within the meaning of the Constitution or laws of the State of Washington, or of any other state; or that the acts complained of in said bill or any of them violate or evade the laws of the land or the settled public policy or laws of the State of Washington.

It says, upon information and belief that the Northern Securities Company is the owner and holder of a large amount of property and stocks in other corporations than the defendant railway companies.

And it denies each and every matter in subdivision XIV of said bill, except as is hereinbefore admitted.

XV.

It denies each and every matter and thing alleged in said bill not hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honor-

able Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GREAT NORTHERN RAILWAY COMPANY,

By M. D. GROVER,
Solicitor.

M. D. GROVER,
Counsel.

Supreme Court of the United States.

THE STATE OF WASHINGTON,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, a Corporation, Great Northern Railway Company, a Corporation, and Northern Pacific Railway Company, a Corporation,

Defendants.

The answer of the defendant, the Northern Pacific Railway Company, to the bill of complaint of the State of Washington.

This defendant, reserving to itself all right of ex-

ception to said bill of complaint, for answer thereto, says:

I.

It admits the matters stated in the first and second subdivisions of said bill.

II.

It admits that large quantities of land were granted to the complainant by the acts of Congress mentioned in subdivision III-A of said bill, for the purposes in said acts set forth; but it knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise, whether any, and, if any, what quantity of said granted lands are left or undisposed of, or as to the value, if any, of said lands, or as to the location thereof, or whether much or any of said lands are located in the territory traversed by either of the defendant railway companies, or are vacant or unsettled, or as to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition over the lines of the defendant railway companies, or upon the construction of lines of railway by either of said companies.

It admits that each of said railway companies has heretofore, and as the circumstances of each case warranted, from time to time, built or caused to be built spur or branch lines into territory adjacent to its railway, as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that

the construction of such spur or branch lines has been or will be prevented or lessened or deferred, or in any way affected, by the formation of the Northern Securities Company. And it denies that the matters, or any of them, alleged in said bill, have prevented or hindered, or will, in the future, prevent or hinder the construction, by the complainant, or by any person or corporation thereto authorized by complainant, of any line or lines of railroad that the complainant may deem necessary or advantageous to bring its lands into market and to secure their settlement and occupation.

And it denies each and every averment in said subdivision III-A in said bill contained not herein expressly admitted.

III.

It admits the complainant's ownership, maintenance and operation of the institutions named in subdivision III-B of said bill, and that some portion of the supplies for some of said institutions requires to be and is in fact carried over the lines of one or the other of the defendant railway companies.

As to the other matters stated in said subdivision III-B, this defendant knows not and has not been informed, save by said bill, and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

IV.

It admits the making of large shipments of wheat and other products, merchandise and timber, from and to the places mentioned in subdivision IV of said bill.

It denies that competition between the defendant railway companies for traffic between said places, or any of them, was, prior to the organization of the Northern Securities Company, any sharper or more active, or more productive of lower rates for freight or passengers, than it has been at all times since such organization and still is; and denies that such rates have been, at any time since the organization of said company, or now are, or will be in the future, any higher than if said company had not been formed. On the contrary, it says that since the formation of said company such rates have already been largely reduced, and are now, and will continue to be, lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

V.

It admits the matters stated in subdivision V of said bill, except that it is not informed and cannot say upon belief or otherwise whether the Great Northern Railway Company is, or ever has been, subject to the constitution, laws, regulations or provisions of the State of Washington, in respect of its internal organization or its interstate or international traffic, or in respect of the right of any

person, or any corporation, to own or hold shares of its capital stock, or whether the Great Northern Railway Company has ever constructed any lines of railway in the States of Washington or Minnesota except the line from St. Cloud to Hinckley, mentioned in said bill, or operates the Eastern Railway of Minnesota by virtue of stock ownership, or otherwise.

It is not informed and cannot say upon belief or otherwise whether Jacob H. Schiff was, on the thirteenth day of November, 1901, or at any time since has been, a director of said Great Northern Railway Company, or whether William P. Clough was at the time of the filing of said bill, or at any time since, a director or officer thereof, or whether James J. Hill mentioned in said bill, was, on November thirteenth, 1901, or ever has been, the owner of, or in possession or control of, or had, on said day, or at any time, subject to his direction or disposition, more than a majority or what proportion of the capital stock of said Great Northern Railway Company.

VI.

It admits the averments of subdivision VI of said bill.

VII.

It admits the incorporation and existence of this defendant and its operation of railways in the State of Washington, but denies its subjection to the con-

stitution, laws, regulations or provisions of said State in respect of its internal organization, or the qualification of its shareholders, or the right of any person or corporation (not being a corporation of the State of Washington) to become an owner and holder of shares of its capital stock, or in respect of its interstate or international traffic.

It admits that the powers of this defendant are delegated to and exercised by a Board of fifteen Directors, and denies that James J. Hill, E. H. Harriman, H. McK. Twombly, Samuel Rae and William Rockefeller, or any of them, were, in the month of April, 1901, members of the Board of Directors of said company or that James J. Hill was a member of said Board at the time of the filing of said bill.

It admits that on the thirteenth day of November, 1901, the total capital stock of this defendant consisted of Eighty Millions of common stock and Seventy-five Millions of preferred stock, the latter of which was subject to retirement as provided by the charter of said company and the agreement under which the same was issued. It denies that on the thirteenth day of November, 1901, or at any time, J. Pierpont Morgan, mentioned in said bill, or said Morgan and other persons acting with him, owned or had in their possession or held under or subject to their control or disposition, upwards of eighty-five per cent or more than a minority of the capital stock of this defendant, then outstanding.

It admits the insolvency of the Northern Pacific Railroad Company and the appointment of receiv-

ers thereof; and the acquisition of its property by this defendant.

It admits that the cities and towns in the State of Washington named in subdivision VII of said bill are points on the lines of each of the defendant railway companies; but it denies that the lines of each of said railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent, prior to the formation of the Northern Securities Company, than they have at all times done since the formation thereof and will continue to do in the future.

It denies that the lines of the defendant railway companies between the State of Washington and St. Paul and Minneapolis, in the State of Minnesota, were or are parallel to each other, or that they have ever been competing lines, except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that the defendant railway companies have, at any time, competed with each other for passenger or freight traffic in any other or different manner, or to any greater extent, than they have continuously done since the formation of the Northern Securities Company and will continue to do in the future.

It admits that the lines of the defendant railway companies are the only lines of any single railway company running East and West entirely across the State of Washington, and the only lines running

East and West between Spokane and Seattle; also the only lines of any single railway company traversing, East and West, all the northern tier of states of the United States west of the Mississippi River; but it denies that said lines are the only lines connecting such territory, or territory tributary thereto by rail with the Pacific Ocean.

And it denies each and every statement in subdivision VII of said bill contained not hereinbefore expressly admitted.

VIII.

It admits that in the spring of the year 1901, the Northern Pacific and Great Northern Railway Companies purchased about ninety-eight per cent of the total shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, and that each of said defendant railway companies thereupon became the owner of and now owns, severally, and in its own sole right, one-half of the shares so purchased, and that said defendant railway companies paid for said shares with their joint bonds, of the description and amount, stated in said bill.

It denies that said bonds were issued by either of said companies in contemplation of placing their lines under a common source of control; and denies that joint ownership or control of the said Chicago, Burlington & Quincy Railroad Company has ever been vested in or exercised by the said defendant railway companies.

And it denies each averment in said subdivision VIII of said bill contained not hereinbefore expressly admitted.

IX.

It admits that the Northern Securities Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey; that it was organized on the thirteenth day of November, 1901, with its principal office located in the City of Hoboken, State of New Jersey, and that its Articles of Incorporation are as set forth in said bill and says that said company was organized, to the best of defendant's belief, for the purposes set forth in its said Articles of Incorporation and for no other purpose whatever.

It admits the fact and the date of the retirement of the preferred stock of this defendant, pursuant to a resolution of its Board of Directors, in conformity with its charter and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of seventy-five millions of the bonds of this defendant, convertible—and which have been converted—into an equal amount of the common stock of said company, and that a preferential right to purchase said bonds was given the common stockholders of this defendant in proportion to their holdings of such common stock.

It is advised and believes that after the formation of the Northern Securities Company and on November twenty-second, 1901, that company did offer to the shareholders of the Great Northern Railway Company to purchase such of their shares as should be offered within sixty days from that date, at $180 per share, and to pay therefor in shares of its own capital stock at par.

Except as aforesaid, it says that the Northern Securities Company, to the best of this defendant's knowledge and belief, has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares.

It says that said company has also purchased for cash, as this defendant is informed and believes, a large amount of the shares of the defendant railway companies, and of other companies.

Except as hereinbefore stated or admitted, it denies each and every matter alleged in subdivision IX of said bill.

X.

It denies each and every allegation of subdivision X of said bill.

XI.

It denies each and every allegation of subdivision XI of said bill except that it admits and avers upon information and belief that every transfer of shares of either of the defendant railway companies by the

holder thereof to the Northern Securities Company was absolute and such holder thereupon ceased to be such or to have any interest in the shares so transferred or to have any interest in such railway company.

XII.

It denies each and every allegation of subdivision XII of said bill.

XIII.

It admits that the articles of association of the Northern Securities Company contain the provisions stated in subdivision XIII of said bill. It denies on information and belief that there was ever any agreement between said James J. Hill and J. Pierpont Morgan, or between them or either of them and any other person, that the first Board of Directors of said company should be named by said J. Pierpont Morgan, or that only such persons should be designated members of such Board as were first approved by said James J. Hill or that said James J. Hill was elected or designated president of said company in furtherance of any such plan.

It admits that the first Board of Directors of the Northern Securities Company was elected on November fifteenth, 1901, and was composed of the persons named in said bill, and that said Board elected the Executive Officers of said company named in said bill; and that James J. Hill and E.

T. Nichols were at that date, and now are, respectively, the President and the Secretary of said Great Northern Railway Company.

But it denies upon information and belief that William P. Clough was, at the date of said election, an officer of the Great Northern Railway Company.

It denies on information and belief that said Board of Directors was designated by J. Pierpont Morgan and James J. Hill, or that their election was a part of the pretended plan and conspiracy, or was had pursuant to the pretended illegal agreement or scheme, alleged in said bill.

It is not informed and cannot state whether said James J. Hill and his associate directors and officers of the Northern Securities Company own or control a majority of the capital stock of said company, and denies that said company has, at any time, in any manner whatever, dictated the policy or management of this defendant or has ever directed or managed its business or practice, or determined or enforced freight or passenger rates on any of its lines in the State of Washington, or elsewhere, or the manner or means of handling freight or passenger business on any of its lines of railway, or that, so far as this defendant knows or believes, it has any purpose of so doing.

It is informed that the Northern Securities Company has no agent or representative in the State of Washington on whom any legal process may be served, and owns no property of any nature whatever situated in the State of Washington.

It denies that any of the matters alleged in sub-

division XIII of said bill tend to or do create a monopoly in railway traffic in the State of Washington, or elsewhere, or tend to or do deprive said State or its citizens of the privilege of competition in fixing charges or rates of transportation between stations upon the lines of railway of the defendant railway companies within said state.

And it denies each and every averment in said subdivision XIII of said bill contained not hereinbefore expressly admitted.

XIV.

It admits that Sections 14 and 16 of Article XII of the Constitution of Washington are as stated in said bill, but says that what professes to be a statement of section 22 of said Article is garbled and imperfect.

It denies on information and belief that in the organization of the Northern Securities Company the promoters thereof had any of the purposes, objects or designs alleged in said bill, and it denies that the Northern Securities Company, or either of the defendant railway companies, or their stockholders, directors, executive committee, officers, agents or representatives, have at any time had or now have any of the purposes, intents or designs charged in said subdivision or elsewhere in said bill; and denies that they or any of them have done any of the things alleged in said subdivision; and denies that the Northern Securities Company is a carrier or a railroad company, within the meaning

of the Constitution or laws of the State of Washington, or of any other state; or that the acts complained of in said bill or any of them violate or evade the laws of the land or the settled public policy or laws of the State of Washington.

It says, upon information and belief that the Northern Securities Company is the owner and holder of a large amount of property and stocks in other corporations than the defendant railway companies.

And it denies each and every matter in subdivision XIV of said bill, except as is hereinbefore admitted.

XV.

It denies each and every matter and thing alleged in said bill not hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained.

NORTHERN PACIFIC RAILWAY COMPANY,

By C. W. BUNN,
General Counsel.

Attest:
R. H. RELF,
(Corporate Seal) Assistant Secretary.
C. W. BUNN,
Solicitor for Defendant.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

THE STATE OF WASHINGTON,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, a corporation, GREAT NORTHERN RAILWAY COMPANY, a corporation, and NORTHERN PACIFIC RAILWAY COMPANY, a corporation,
Defendants.

The Replication of the State of Washington, the above-named Complainant, to the Answer of Northern Securities Company, a corporation.

This repliant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant

Northern Securities Company, for replication thereunto, saith, that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. B. STRATTON, AND
W. B. DOUGLAS.
Solicitors for Complainant.

Northern Securities Company, for replication thereun-
to, saith, that it doth and will aver, maintain, and
prove his said bill to be true, certain and sufficient in
the law to be answered unto by the said defendant, and
that the answer of the said defendant is very uncertain,
evasive, and insufficient in law to be replied unto by
this replicant; without that, that any other matter or
thing in the said answer contained, material or effect-
ual in the law to be replied unto, and not herein and
hereby well and sufficiently replied unto, confessed or
avoided, traversed or denied, is true; all which matters
and things this replicant is ready to aver, maintain, and
prove as this honorable court shall direct, and humbly
prove as in and by his said bill it hath already proved.

W. H. STRATTON, and

W. H. DOUGLAS,

Solicitors for Complainant.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

THE STATE OF WASHINGTON,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, a corporation, GREAT NORTHERN RAILWAY COMPANY, a corporation, and NORTHERN PACIFIC RAILWAY COMPANY, a corporation,
Defendants.

The Replication of the State of Washington, the above-named Complainant, to the Answer of Great Northern Railway Company, a corporation.

This repliant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant

Great Northern Railway Company, for replication thereunto, saith, that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. B. STRATTON, AND
W. B. DOUGLAS.
Solicitors for Complainant.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

THE STATE OF WASHINGTON,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, a corporation, GREAT NORTHERN RAILWAY COMPANY, a corporation, and NORTHERN PACIFIC RAILWAY COMPANY, a corporation,
Defendants.

The Replication of the State of Washington, the above-named Complainant, to the Answer of Northern Pacific Railway Company, a corporation.

This repliant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant

Northern Pacific Railway Company, for replication thereunto, saith, that it doth and will aver, main ain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. B. STRATTON, AND
W. B. DOUGLAS.
Solicitors for Complainant.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Original.

STATE OF WASHINGTON, COMPLAINANT,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, AND NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANTS.

Brief on Behalf of Defendant Railway Companies, Upon Motion for Leave to File Bill.

If the organization and acts of the Northern Securities Company infringe upon any rights of the State of Washington the state is certainly entitled to redress, and if the bill now presented shows such an infringement and makes out a case of which this court, without departing from its settled practice, may properly take cognizance, the defendants have reason to welcome rather than to oppose the course of the state in resorting to this, the highest court in the land, whose decision will everywhere be received as authority.

This court has, however, by a series of decisions, deter-

mined that not every suit brought by a state against citizens of another state is the proper subject of cognizance, has defined what original suits a state may and what suits it may not bring against citizens of another state, and has wisely determined that the question whether an original suit proposed to be brought falls within one class or another—whether the court will or will not take cognizance of it—shall be passed upon at the outset, when the declaration or bill is offered for filing.

In view of the character of the original jurisdiction of the court, the question whether it shall be exercised in a given case is of an importance by no means limited to the effect of the decision on the parties to it. In the recent case of *Minnesota v. Northern Securities Company* the court indicated a willingness, if not a wish, to hear argument, by ordering notice to be given of the motion to file the bill. That case went off on a question of defect of parties. In *this* case that defect does not exist, but in respect of other questions sought to be raised, this case closely resembles that of the State of Minnesota. In determining questions so important, we assume that the court will now, as before, desire the assistance of counsel.

We accordingly submit the following considerations as showing that the state has not in its bill made a case of which the court can, without departing from its settled doctrine and practice, take cognizance.

Whether the state has made such a case depends on the nature of the right, if any, asserted in the bill, which the suit is brought to enforce, the nature of the violation, if any, of the right, which the state seeks to prevent or redress, and the nature of the relief sought, whether within or beyond the competency of the court to grant.

The gist of the bill is:

That certain stockholders of the two defendant railway companies (one a corporation of Minnesota, the other a corporation of Wisconsin) have caused to be formed under the laws of New Jersey the Northern Securities Company, with the intention of making that company the holder of a majority of the stock of the two railway companies; that, in pursuance of this plan, the Securities Company has acquired a majority of such stock. The articles of incorporation of the Securities Company are set forth, and it appears (and must be here presumed) that it has all the power of a natural person to buy, hold, vote, and sell stocks; but its right to hold and vote the stock in question is challenged because the lines of the railway companies (some part of which is in Washington) are parallel and competing.

Though the alleged wrongful acts were done, not in Washington, but in New Jersey, the complaining state says they are illegal and should be enjoined by this court because in violation of those sections of article 12, constitution of Washington, reading as follows:

> "SEC. 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."
>
> "SEC. 16. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a competing line."
>
> "SEC. 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any

manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise."

The State of Washington is a political corporation with full sovereignty, except so far as surrendered to the United States, over the district or country known by that name. Among the powers surrendered to the United States is that to regulate interstate commerce, and as to that commerce the State of Washington has no power beyond that of legislating in the way of police to protect the lives, health, and well-being of its citizens. It has no power to regulate that commerce. But as to commerce local to the State there is now no question as to its power to fix reasonable railway rates (*Chicago, Milwaukee & St. Paul R'y Co. v. Minnesota*, 134 U. S., 418; *Minneapolis Eastern R'y Co. v. Minnesota*, 134 U. S., 467; *Smyth v. Ames*, 169 U. S., 466); to compel roads to make connections with other railroads for the purpose of transferring cars (*Wisconsin Railroad Co. v. Jacobson*, 179 U. S., 287); to regulate the running of passenger trains so as to accommodate communities along the lines (*Lake Shore R'y Co. v. Ohio*, 173 U. S., 285); to regulate the heating of passenger cars and the manner of running trains (*New York R. Co. v. New York*, 165 U. S., 628); and generally to regulate the operation of railroads, require the construction of proper stations and facilities, bridges and street crossings, or the performance of any other service reasonable in the maintenance and operation of a public highway (*Cleveland*

R'y Co. v. Illinois, 177 U. S., 514; *State v. Minneapolis & St. Louis R'y Co.*, 80 Minn., 191).

In short, as to local rates and facilities the State of Washington has full power so long as its requirements are reasonable. Neither the state nor any citizen has any right to demand or require what is unreasonable, and certainly no equity to come into this court to obtain unreasonably low rates by injunction. Reasonably low rates it may obtain by its own statutes and in its own courts. The bill does not allege any accomplished injury, but complains of acts which it is alleged have a tendency to injure. The bill does not say that any rate has been raised, or that any rate is unreasonably high, or that any reasonable facility of traffic is not furnished. Neither the state nor its citizens can suffer any actual injury unless, either unreasonably high rates are charged, or inadequate facilities furnished. As to these matters the state has the remedy in its own hands in its own jurisdiction. The original jurisdiction of this court in equity cannot, we submit, be invoked where the state has in its own legislature and courts a full, adequate, and perfect remedy.

In this bill the state seeks in a foreign jurisdiction a remedy by injunction to compel the Northern Securities Company, a New Jersey corporation, to conform to and obey what it conceives to be its law and policy; this although the Securities Company is lawfully organized in the State of New Jersey with power to buy and hold stock, and is doing no act which it is not authorized to do by the law of the state of its organization. Its acts were all done in that state and none of them in the State of Washington. The bill

asks this court to restrain by injunction a citizen of New Jersey from doing there acts entirely lawful according to New Jersey laws and sanctioned by the policy of that state, on the allegation that those acts either violate, or evade, or tend to render nugatory, laws of the complainant state. The sole ground of complaint is the alleged violation in New Jersey of certain enactments contained in the constitution of Washington. The injunction prayed for would be nothing more or less than compelling the defendant to obey in New Jersey the laws of Washington.

The sum and substance of the grievance is, that the ownership of the shares of the two defendant railway companies, formerly vested in several persons, has now been united in one holder, and that holder a corporation. But reference is made to no Washington statute, and none exists, which prohibits individuals or copartnerships or private corporations having charter authority from acquiring and holding stocks of parallel or competing railroad companies. On the contrary, the corporation laws of the State of Washington (1 *Ballinger's Code*, sec. 4261) make stock personal property, and of course it is salable as such according to the law of the place where it is sold. The provision in the statute quoted, that the stock shall be transferable only by registry on the corporate books, is a declaration that, except as far as so limited, it is transferable according to the customs of the commercial world (*Bank v. Lanier*, 11 Wall., 369, 377).

There is not one syllable in the constitution or statutes of Washington which purports to abridge the right of individuals, partnerships, or corporations to buy stock, and the complainant is driven to *infer* so important a prohibition.

And more than this. The right asserted by the State of Washington—the right and the only right which she claims has been violated—is the right to dictate who may and who shall not be shareholders in two railway companies, one chartered by Wisconsin, the other by Minnesota. Washing-

ton may prescribe the qualifications for shareholders in companies of her own creation. She may authorize or forbid the purchase of shares in foreign companies by her own corporations and possibly by her individual citizens. But the right here asserted, to dictate that a corporation of New Jersey shall not become a shareholder in a corporation of Wisconsin or of Minnesota, has no basis whatever in principle or authority. Every state in the Union—certainly every state through which these railways run—has as valid a claim as Washington to the right she here asserts, and it is needless to picture the results of their exercise of it.

The court should not allow this bill to be filed if it plainly appears that no decree could be rendered upon it in favor of complainant. The court considered, in *Pearsall v. Great Northern Railway Company*, 161 U. S., 646, 671, and in *Louisville and Nashville Railroad Company v. Kentucky*, 161 U. S., 677, 693, a statute of Minnesota and a provision of the constitution of Kentucky prohibiting the consolidation of parallel and competing roads, which were stronger and broader than section 16, article XII, of the Washington constitution. The court said in the former case (pp. 671, 672):

> "Doubtless these stockholders could lawfully acquire, by individual purchases a majority, or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests, as such, in common. This, though possible, would not be altogether feasible, and would require considerable time for its accomplishment. In a few years the two companies might by sales of the stock so acquired, become completely dissevered, and the interests of the stockholders of each company thus become antagonistic."

And in the latter case (p. 693):

> "It is true, as was observed in *Pearsall v. The Great Northern*, that the stockholders of the L. & N. Co. may individually become the purchasers of the Chesa-

peake Co. at a judicial sale, and may organize a new corporation, but it would still be a corporation separate and distinct from that of the L. & N. Co. The inhibition of the constitution is not against the sale to individuals, though they may chance to be stockholders in a competing line, but against the acquisition by a railway, in any form, of a parallel or competing line."

See also, to the same effect, *Havemeyer v. Havemeyer*, 43 N. Y. Superior Ct., 515; *Commonwealth v. R'y Co.*, 139 Pa., 457, reaffirming doctrine held in 132 Pa., 591; *White v. Ryan*, 15 Pa. C. C., 170.

We submit that the court in the language above quoted passed upon the fundamental and essential question presented by this bill, so far as concerns so-called consolidation of competing railways. If any law could, it is clear that no law has attempted to say that one or several individuals could not purchase and hold all the stock of two competing roads. So doing is neither prohibited by morality, nor by statute, nor by any rule of the common law. It is perfectly innocent and lawful. If one man may buy stock in two competing roads, doubtless a partnership may; or several men, having already acquired the stock, may lawfully form a partnership and turn in the stock as partnership assets; or a corporation, having by the law of its organization the same power which an individual has to buy and hold stock, could buy and hold the stock of parallel and competing railways as an individual might; or several individuals, having acquired stock in competing roads, might lawfully form a corporation and might make the stock corporate assets as lawfully as they might make it partnership assets.

This right is not impaired by any of the sections of the Washington constitution cited. The prohibitions of section 16 are directed wholly against competing railway companies. A corporation and its shareholders are different entities (*Baldwin v. Canfield*, 26 Minn., 43; and see *Bank of U. S. v. Planters'*

Bank, 9 Wheat., 904, 907, decided in 1824, when, for purposes of jurisdiction, the court looked to the citizenship of the shareholders in suits against corporations). Neither a single stockholder, nor a majority of stockholders, nor 95 per cent. of the stockholders are the corporation (*Humphreys v. McKissock*, 140 U. S., 304, 312). The court held in *Pullman Car Co. v. Missouri Pacific R'y*, 115 U. S., 587, that ownership of all the stock of a corporation did not constitute "control," saying, pp. 596, 597:

> "We are also of opinion that the railroad of the St. Louis, Iron Mountain and Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly the St. Louis, Iron Mountain and Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all or nearly all its stock, and in that way can determine who shall constitute its board of directors, but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain and Southern Company is in no legal sense controlled by the Missouri Pacific. * * * The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation own its property, but they are not the managers of its business or in the immediate control of its affairs. Ordinarily

> they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain and Southern to control the election of directors, and this it has done. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

The provision of the constitution forbidding either of two competing *railroad* companies from doing certain things is upon its face and by its plain meaning no more a prohibition to the stockholders of either in their individual capacity than the provision in the constitution of Minnesota (art. IX, sec. 5) that "the state shall never contract any debts for works of internal improvements, or be a party to carrying on such works," is a prohibition to its citizens. This constitutional provision is held not even to apply to cities (*Davidson v. Commissioners*, 18 Minn., 432, 442).

To charge the defendant railway companies or their directors with responsibility for their stocks being held by one person or corporation is absurd. A corporation and its board of directors have no right to decide who shall hold its stock; that matter does not concern either the corporation or board. Suppose an individual or a securities company had presented shares to the board of either of these railway companies for transfer on its books. Could the board properly have said, "We decline to recognize your

ownership, because we apprehend you have also bought, or are seeking to buy, stock in a competing railway, and this we conceive to be harmful to public interests?"

If the legislature had intended to include individuals, partnerships, and corporations other than railway companies, the prohibition would have been directed in plain terms against them. The insertion of a few simple words was all that was necessary to express the intention now claimed by the state, and it cannot be conceived that the legislature had that intention and yet refrained from so easy an expression of it.

The prohibition is against consolidating the "stock, property, or franchises" of one railroad corporation with any other railroad corporation owning a competing line. The term "consolidate" was defined by the first legislature of Washington which met soon after the adoption of the state constitution, and which doubtless contained many of the framers of that instrument (1 *Ballinger's Code*, sec. 4304). This statute opens with language which follows almost word for word the provisions of section 16 in article XII of the constitution: "Any such railroad corporation may consolidate its stock, franchise and property with any other railroad corporation * * * *and become one corporation.*" The act then provides that articles shall be adopted by each corporation and filed in a public office stating the terms of the consolidation.

This statute contains a correct definition of the term "consolidate," according to its usual signification (2 *Morawetz on Corp.*, sec. 939, and cases cited; *Green County v. Conness*, 109 U. S., 104, 106; *Central Railroad v. Georgia*, 92 U. S., 665, 670, 671; *Tennessee v. Whitworth*, 117 U. S., 139, 147; *Archer v. R'y Co.*, 102 Ill., 493, 503; *Beach on Corporations*, sec. 328; *State ex rel. Nolan v. Montana R'y Co.*, 21 Mont., 221; *Gore v. R'y Co.*, 19 Abbott's New Cases, 193, 210).

As this court pointed out in the *Pearsall case*, the ownership by one individual or set of individuals of stock in two

competing railway companies is not consolidation and not within the meaning or spirit of the statute, because at any time the stock so acquired may be parted with, and any relations between the companies become completely dissevered, and the interests of their respective stockholders antagonistic.

But the bill charges that the acts complained of are an *evasion* of the constitution. It is not alleged, however, that there is any subterfuge or concealment. The real transaction is just as it appears. Individual stockholders of the two railway companies have seen fit to turn their stock over to a corporation alleged to have been formed with that intent and purpose. On its face this is either within the statutes or outside of them. It cannot be held illegal as an evasion of the statute, without saying that this court in the *Pearsall case* and in the *Louisville & Nashville case* pointed out to the parties how to evade the statute.

The notion that to do a thing not forbidden by statute, but which may produce the same or some of the same results as a thing which is forbidden, is illegal because it is doing indirectly that which the law forbids doing directly, is responsible for some loose argument and decision. It should have received its quietus from recent decisions in the House of Lords and Privy Council (*Bullivant v. Att'y Gen. of Victoria* (1901), A. C., 196; *Simms v. Register of Probates* (1900), A. C., 323).

What one man may lawfully do singly, two or more may lawfully agree to do jointly—that is, if the act is not immoral or wrongful. For a number to conspire to do a thing wrong or unlawful may be a crime, though for one to do

the same thing may not be a crime. But unless we greatly misunderstand the law, a thing which it is rightful and lawful for one person to do may lawfully be done by a combination of persons. As Justice Mitchell very well said in *Bohn Mfg. Company v. Hollis*, 54 Minn., 223, 234:

> "What one man may lawfully do singly, two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful act of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants. If the act be unlawful, the combination of many to commit it may aggravate the injury, but cannot change the character of the act. In a few cases there may be some loose remarks apparently to the contrary, but they evidently have their origin in a confused and inaccurate idea of the law of criminal conspiracy, and in failing to distinguish between an unlawful act and a criminal one. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to conspire to commit an unlawful act, which, if done by one individual alone, although unlawful, would not be criminal. Hence, the fact that the defendants associated themselves together to do the act complained of is wholly immaterial in this case. We have referred to this for the reason that counsel has laid great stress upon the fact of the combination of a large number of persons, as if that, of itself, rendered their conduct actionable. (*Bowen v. Matheson*, 14 Allen, 499; *Mogul Steamship Co. v. McGregor*, 23 Q. B. Div., 598; (1892) App. Cas., 25; *Parker v. Huntington*, 2 Gray, 124; *Wellington v. Small*, 3 Cush., 145; *Payne v. Western & Atlantic R. Co.*, 13 Lea, 507.")

The case of *Mogul Steamship Co. v. McGregor* will be found a very satisfactory authority on this question.

Whatever injurious effect may be likely to follow from a misuse of power incident to ownership of a majority of shares

in two competing railway lines, that power is no more likely to abuse because it rests in several men, or in a corporation, rather than in one man.

The most astonishing extreme reached by the bill of complaint is the statement that the Northern Securities Company is "a railroad corporation" within the meaning of the laws of Washington. Yet it is only upon this forced and preposterous contention that the complainant can possibly point out any supposed breach of her laws. This branch of the complainant's contention need not be further noticed, because it is clear that the securities company has no franchise either to build, operate, or manage a railway, its power being limited to the owning of stock and doing such acts as an individual owner of stock might lawfully do.

While it may be conceded, in accordance with the doctrine of *Attorney General against The Railroad Companies*, 35 Wis., 425, and *Stockton v. Central Railroad Company of New Jersey*, 50 N. J. Eq., 52, that a state may in a proper case in its own courts enjoin corporations to obey its laws within its own territory, there is no precedent, we submit, of a state or other sovereign power enjoining in the courts of a foreign state obedience to the statutes of the complaining state. It is a general principle that statutes can be enforced by a state within its own jurisdiction only (*Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265).

This rule, as we understand it, is not confined to mere

penal statutes, but is of general application. It is a general principle of international law that the statutes of one country have no effect or operation in another. Can it be possible that a statute of Washington is rendered enforceable in the courts of foreign countries by the omission of penalties when the same statute would not have been enforceable if penalties had been added? Do police statutes without penalties differ in principle from statutes with penalties? Surely, the nature of the law is the same in either case, and in either case may properly be given the same extraterritorial obligation. A penalty is simply one form of punishment for disobedience; and if a law imposing a penalty cannot be enforced extraterritorially a different rule cannot be applied to the same law because it omits the penalties and merely commands obedience (*Security Trust Co. v. Dodd, Mead & Co.*, 173 U S., 624, 629).

Can one nation sue in the courts of another to collect its customs or other taxes? In the case of *King of Spain v. Oliver*, Peters C. C., 276, it was conceded that the King could sue for the customs duties claimed only on proof of a contract or bond to pay them. See the case explained by Mr. Justice Gray in *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 290.

Suppose a number of citizens of New York are engaged in that state in a scheme which, if successful, would fraudulently conceal from taxation property in Washington liable thereto or hinder the collection of taxes thereon. Could the state maintain a suit in this court to restrain such proceedings of those persons?

Suppose the State of Washington has a stringent pure-food law forbidding the sale within the state of adulterated goods. One or more persons in another state, citizens of that state, are engaged in making adulterated food products to be secretly shipped into Washington, and there sold to consumers. Would a bill to enforce such a statute by en-

joining the carrying out of such scheme be entertained in this court?

Suppose the State of Washington, like most of the other states, has a stringent insurance law forbidding unlicensed companies from insuring property in the state. One or more companies of other states are, without license, secretly issuing policies within the state. Can the state sue in this court to enjoin such violation of its statute?

Suppose two railway companies, incorporated in Illinois, operate lines in Washington, whose statutes prohibit any discrimination in railway rates as between persons or places. Those companies in Illinois agree upon discriminating rates upon traffic between points in Washington. Could the State of Washington sue in this court to enjoin those Illinois corporations from thus violating its statutes?

And in any one of these cases, could the state maintain such a suit in the courts of another state or country, or in any jurisdiction but its own?

If the state can sue in equity in another jurisdiction to enjoin a threatened violation, or a continuance of an existing violation, of any of these statutes, why can it not, after such violation, sue at law in another jurisdiction for the statutory penalty made recoverable in a civil action, or for damages?

That it cannot sue at law is plainly held in *Wisconsin v. Pelican Ins. Co., supra.* And what reason can be given in support of the right to sue in equity in a foreign jurisdiction to enforce such statutes which would not equally sustain an action at law?

If a state may sue in a foreign jurisdiction to enjoin an obstruction to the collection of taxes on personal property within its limits, it may certainly sue there to collect them, if by its laws such taxes are collectible by action. The right of the state to have the collection of taxes unobstructed is no greater than, and no different from, its right to have the taxes paid. An obstruction of collection and a direct

refusal to pay are a violation of the same statutory right of the state. Could the state sue in this court to collect its taxes?

If the state can, as a sovereign, bring this suit in this court to enjoin the violation of the statutes here involved, it might—and every other state in like circumstances might—bring an original injunction bill in this court in every one of the cases supposed and in numberless others—indeed, in case of any attempted violation of almost any of its statutes of a public and governmental nature, especially any of the statutes passed in the exercise of its police power—and the original cases on the docket of the court would be the rule as they have heretofore been the exception.

In the *Pelican Insurance case* (page 289), the court, in speaking of its original jurisdiction under the Constitution, said:

> "The grant is of 'judicial power,' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all."

That is, this court will not originally entertain a suit brought by a state which the state, on principles of international law, could not maintain in the courts of England or of one of the other states. We think the most diligent search will fail to find any case in England or in this country where a state or sovereign has maintained in any foreign court a suit solely to enforce its own laws. Undoubtedly a state may sue to recover its own *property*, and such a case could be maintained though the title to the property had passed in the complaining state by virtue of a statutory forfeiture. So suits can be maintained in a foreign country to enforce a contract, good by virtue of the laws of the country where it was made. So an action may be maintained in a foreign jurisdiction for death, although

the cause of action rests on a statute, and suits by creditors to recover against stockholders or officers of a corporation can sometimes be maintained, though the liability arose out of a foreign law. But in all these cases the courts enforce, not the law of a foreign state, but a right created under it. The foreign law has already enforced itself and done its work within the foreign territory in creating the right, whether of property or contract, and needs not, nor is it capable of, further enforcement in the particular case, whether in the domestic or in foreign courts. This suit is not to recover property or collect a debt, but is brought purely to enforce the foreign law. It is, moreover, a suit to aid the complaining state in enforcing its laws by injunction. The absence of any precedent for such a suit should be conclusive.

Section 14 of article XII of the Washington constitution does not touch the case. It is a prohibition against the pooling of earnings by common carriers. Substantially the same provision was in that section of the constitution of Kentucky considered by this court in the *Louisville & Nashville case* and it did not prevent this court from saying that the same persons might lawfully acquire the control by stock ownership of two competing railways. Moreover, the prohibitions of this section, like those of section 16, are directed only against action of *carrying corporations as such.*

The other section referred to (section 22 of article XII) is not completely quoted in the bill of complaint. It closes by this declaration:

> "The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise."

The section is evidently not self-executing. It does not in and of itself constitute a sufficient rule, either defining the right or duty created, or providing means for its enforcement. While the provision might be regarded as mandatory to the legislature to enact the needful legislation, that legislation not having been passed, the constitutional section standing alone merely indicates principles, without laying down any rules by means of which those principles may be given the force of law (*Cooley's Constitutional Limitations*, pp. 99, 100). On the latter page Judge Cooley says:

> "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law."

In a much stronger case this court held that the constitution of Mississippi was not self-executing (*Groves v. Slaughter*, 15 Pet., 495, 499–501). The constitution of Mississippi said, "The introduction of slaves into this state as merchandise, or for sale, shall be prohibited from and after the first day of May, 1833." (See also *French v. Teschemaker*, 24 Cal., 518.)

This court is without the benefit of any decision of the supreme court of Washington as to whether this section is self-executing, or as to (*a*) whether it applies to any except corporations organized in that state, or (*b*) whether it applies to acts done outside the state, or (*c*) as to what is a monopoly

or trust within its meaning, or (*d*) as to what is a *combination* within its terms, or (*e*) as to whether the individual acts of stockholders, as distinguished from their acts on behalf of the corporation, are intended to be reached.

In *Wood v. Seattle*, 23 Wash., 1, 20, 21, the supreme court of the complaining state held that this section did not prohibit the *consolidation* of competing street railway lines.

Little need be said as to those allegations of the bill showing the state to be a land owner and shipper. Up to this point we have endeavored to show (*a*) that the acts of the defendants are lawful; (*b*) that whether lawful or not the State of Washington cannot maintain this suit. If we are correct on either of these propositions, it disposes of the whole bill, including the allegations just mentioned.

In respect of these allegations the state devests itself of its sovereign character, and must make in its bill the case required to be made by any individual land owner or shipper suing in any court of general jurisdiction.

No injury has yet been sustained. True the railway companies are not yet building branches into the state's unimproved land, but that is a thing they have made no contract to do and are not obligated to do. It appears from the bill they and their predecessors have steadily refrained from doing so during all the years of their existence. If the omission to build these branches has gone on for many years without actionable injury to the state, it is hard to see how the continuance of the omission from November 13, 1901, until the present time is an injury entitling the state to an injunction. Neither company has any inducement to build these branches except the profit to be derived from them, and that inducement will be as strong and the branches are as

likely to be built, the majority of stock being owned by the Securities Company, as would be the case if the stock were distributed among many holders.

If the state as a land owner and shipper may bring a bill like this, so may every land-owner in Washington and every one in Washington, or out of it, who is shipping, or likely in the future to ship over either railway; for the gist of the complaint is not that the state has already been overcharged on any shipment, nor that either railway has threatened to overcharge it on any shipment it is about to make, but simply that from the infirmity of human nature the state apprehends an injury.

A state as sovereign may under the doctrine of *Attorney General vs. Railway Companies*, 35 Wis., sue in its own courts to compel corporations within its jurisdiction to obey its laws. That jurisdiction does not depend on the existence or non-existence of an adequate remedy at law and may be exercised without showing damage. But a state as a shipper can bring no suit in a foreign jurisdiction except upon those principles which control suits by other shippers. Can it be possible that every shipper on these railways could maintain injunction suits to restrain the Northern Securities Company from holding stock in the two defendant railway companies? As a shipper and standing like other shippers, the state could not maintain an injunction bill in a foreign court without showing the inadequacy of its remedies at law. The state as a shipper has, like other shippers, a plain, adequate, and complete remedy to test at law the reasonableness of rates.

GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Of Counsel for Defendant Railway Companies.

Supreme Court of the United States

OCTOBER TERM, 1901.

Original, No. .....

THE STATE OF WASHINGTON, COMPLAINANT,

vs.

NORTHERN SECURITIES COMPANY AND OTHERS, DEFENDANTS.

Brief on Behalf of Northern Securities Company, Defendant, in Opposition to Application for Leave to File Bill of Complaint.

The complainant's bill is framed upon the same lines as the bill of the State of Minnesota which was under consideration in the case of Minnesota *v.* Northern Securities Company, decided February 24, 1902. The averments of the bill in this case are couched in identical language with many of the averments in the Minnesota case, the statements being varied only in a few particulars to meet the different conditions applicable to the State of Washington. Neither of the defendants is or is alleged to be a corporation of the State of Washington. Indeed, if any of the three defendants were a

corporation of that State, under the decision in Minnesota *v.* Northern Securities Company this court would have no jurisdiction of the parties.

The gravamen of the complaint is the formation of a corporation under the laws of New Jersey, to wit, the Northern Securities Company, whose object, as alleged in the complaint, is to furnish a holding company to which a controlling interest of the capital stock of the two defendant railway companies has been or is to be transferred, in order to make a practical consolidation of the two railway companies, and thereby to violate and evade the settled public policy and laws of the State of Washington, which are alleged to forbid the consolidation of stock, property, or franchises of railroad corporations owning competing lines, it being alleged that the lines of railway owned and operated by the Great Northern Railway Company and the Northern Pacific Railway Company are competing lines through that State.

To avoid the objection under which this court refused to entertain the bill of the State of Minnesota against the Northern Securities Company, the State of Washington has made The Great Northern Railway Company and The Northern Pacific Railway Company defendants.

The bill prays for no relief except by way of injunction. It prays that the Northern Securities Company may be enjoined—

First, from voting at any meeting of stockholders of either of the railway companies, or from in any manner acting as the owner of any shares of capital stock of either of them, and from attending any meeting of stockholders.

Second, from in any way aiding, advising, directing, in-

terfering with, or taking part, directly or indirectly, in the management, control, or operation of any of the lines of railway of either of said companies or their affairs.

Third, from exercising any of the powers or performing any of the duties or in any manner acting as the representative, officer, member of the board of directors, or employé of either of the railway companies.

Fourth, from acquiring any additional capital stock of said railway companies.

Fifth, that the railway companies may be enjoined from recognizing or accepting the Northern Securities Company as the holder or owner of any shares of stock of either of the railway companies, and from permitting the Securities Company to vote such stock, and from paying any dividend on stock to the Securities Company.

Sixth and seventh, that the two railway companies be enjoined from interfering with or controlling the policy or management or business affairs of each other.

The bill does not state under what law of the State of Washington the railway companies entered that State or are permitted to do business there. The Great Northern Railway Company is a corporation organized and existing under the laws of Minnesota, and the bill alleges (paragraph V) "that since February 1, 1890, the Great Northern Railway Company has continued to and does now control, operate, and maintain each and all of said lines" (being the lines theretofore enumerated, some of which extend through the State of Washington) "as one complete railroad system, and thereby became and continued to be a corporation subject to the laws, regulations, and provisions of the State of Washington relating to railway or railroad corporations, in-

cluding those provisions of the constitution of said State hereinafter specifically pleaded or referred to."

As to the Northern Pacific Railway Company it is alleged (paragraph VI) that it is a corporation of the State of Wisconsin and the successor of the Northern Pacific Railroad Company, a corporation organized under an act of Congress. The bill further alleges (paragraph VII) "that the Northern Pacific Railway Company since the year 1895 has continued to operate its system of railways within the State of Washington, and thereby became and continued to be a corporation subject to the laws, regulations and provisions of said State relating to railway or railroad corporations, including those provisions of the constitution of the State of Washington hereinafter specifically pleaded or referred to."

The Northern Securities Company is a corporation organized under the general corporation act of the State of New Jersey, strictly in accordance with the laws of that State, and has lawful right and authority under its charter "to acquire and hold any shares of capital stock created or issued by any other corporation or corporations of any other State, Territory, or country as fully and to the same extent as an individual person might or could do."

Every specific thing charged in the bill of complaint as having been done by the Northern Securities Company and its stockholders and by the stockholders of the two railway companies was in the exercise of a usual universally conceded right in and over personal property—the right to buy, sell, hold, and vote stock, and to pay and receive dividends thereon. The suggested injury that is feared is admitted to spring from the fact that one person, or a number of persons who are of one purpose, hold a majority or con-

trolling interest in the stock of two competing lines of railway—a thing not forbidden by the law of Washington or any other State.

None of the acts complained of as furnishing the basis of the complaint of the State of Washington is alleged to have been done within the jurisdiction of that State. The burden of the complaint is that acts lawful where done, acts not pretended to be governed by the laws of Washington, are injurious or calculated to be injurious to the State of Washington in its sovereign capacity, because the effect of those acts will be to destroy the spirit and policy of competition existing or at least which the State desires shall exist between these two railroads as operated within the jurisdiction of the State of Washington.

In the Minnesota case there was at least a show of justification for that State in its effort to get into this court to test the legality of the acts complained of, because one of the railway companies is a creature of that State and derives its corporate powers from the grant of the Minnesota legislature and is amenable to its laws in its corporate conduct. But in this case each of the corporations defendant is the creature of another State and owes no duty to Washington except to obey its laws in the mere operation of such part of its local business as is actually carried on within the territorial limits of the State. Who may own the stock of the railroad companies, how much any one person may acquire, the purpose for which it is acquired, the personnel of the boards of directors, all such matters are regulated exclusively by the laws of another State, and the State of Washington has no more right to question them than she has to regulate the title to lands in the District of Columbia. It is certainly an aston-

ishing proposition that Washington has a right to complain that a New Jersey corporation has acquired a majority of the capital stock of two railroad companies, one a Wisconsin corporation and the other a Minnesota company, merely because the railroad companies operate roads in Washington.

As was said by this court in Pullman Car Co. *vs.* Missouri Pacific R'y (115 U. S., 587, 597), speaking of a case where a majority of the stock of one railroad company was owned by another company:

"Practically it may control the company, but the company alone controls the road. In a sense the stockholders of a corporation own its property, but they are not the managers of its business or in the immediate control of its affairs."

The idea of the complainant is that it has a right to supervise the number and character of the owners of the stock of a railroad company, and if it is found that they are harmonious among themselves and friendly with the stockholders of a competing company and are likely to elect managers who will harmonize, then the State can hold up the stockholders by injunction, deprive them of dividends, take away their right to vote, and compel them to desist from buying more stock.

No law of Washington or of any other State limits the amount of stock which one person, whether natural or corporate, may buy and hold. No law of any State or country makes the right to vote upon stock dependent on the motives or purposes of the stockholder. The action of the individual stockholders is not the action of the corporation, and cannot be treated as such for purposes of judicial relief. It

is the action of the corporation through its constituted officers and agents that is alone the subject of legal regulation. The injury, if any there can be, which may happen to the complainant must result from the action of the railroad companies and not from the action of the stockholders. The latter have no corporate rights or privileges in Washington, exercise none there, and claim none there. And it is not averred that the railroad companies are doing or threatening to do of themselves any act in derogation of free and open competition in the State of Washington.

It is not deemed necessary to repeat here the extended argument which was made before this court on behalf of the Northern Securities Company in opposition to the application of the State of Minnesota for leave to file its bill of complaint. A restatement of the points there urged will be sufficient without amplification.

I.

The bill of complaint does not present a case of a controversy of a civil nature which under the Constitution and laws of the United States is justifiable in this court.

This is a suit to enforce the local law and policy of a sovereign and independent State, whose right to make laws and to enforce them exists only within itself and by means of its own agencies and is limited to its own territory.

Whatever the law of the State of Washington is upon the

subject of the consolidation of railroad corporations (as to which we shall hereafter speak), it is a municipal or police law, and not one conferring rights of a proprietary or contractual nature. Neither the courts of the United States nor of any other jurisdiction outside of the State of Washington will lend their aid to the enforcement of the police laws of Washington.

Wisconsin *v.* Pelican Ins. Co., 127 U. S., 265, 297.
Chisholm *v.* Georgia, 2 Dall., 419, 431, 432.
Cohens *v.* Virginia, 6 Wheat., 264, 398, 399.
The State of Rhode Island *v.* The State of Massachusetts, 12 Pet., 657, 722, 731.
Hans *v.* Louisiana, 134 U. S., 1, 12, 14.
Capital Traction Co. *v.* Hof, 174 U. S., 1, 9.
Story on Conflict of Laws, pars. 7, 8, and 20.
Houston *v.* Moore, 5 Wheat., 1, 69.
Dred Scott *v.* Sandford, 19 How., 393, 460.

The cases of Pennsylvania *v.* Wheeling, &c., Bridge Company (9 How., 647; 11 How., 528; 13 How., 518; 18 How., 421, 429) and Missouri *v.* Illinois and Chicago Drainage District (180 U. S., 208) were both cases where civil rights were involved, and in each case the State showed a special and peculiar injury resulting from the threatened nuisance, such as would enable a private person to maintain a similar action in another court.

II.

The damage to the State of Washington which is apprehended from the acts of the defendants is remote, uncertain, and entirely consequential. It is not the direct result

of the acts of the defendants which are set out in the bill, but it is a result which, within the bounds of possibility, but not of certainty, may ensue from other acts which the defendants have not done, but will be enabled to do by reason of the ownership of the capital stock of the railway companies by the Securities Company. The objection is not to the acts already done, but to the position in which the defendants have put themselves, whereby, as the State of Washington apprehends, the Northern Securities Company has secured a vantage ground from which it may be able to thwart and overcome the public policy of that State.

Laws prohibiting the consolidation of railroad companies are substantially the same as those known as anti-trust acts, which are regarded as being enacted and enforced under the police power of the State.

Louisville & Nashville R. R. *v.* Kentucky, 161 U. S., 677, 695.

Reference is also made to the decisions of the Federal courts in suits to enforce regulations of railroad rates, to enjoin their breach, or to collect penalties for their violation.

State of Iowa *v.* Chicago, B. & Q. R. Co., 37 Fed. Rep., 497.

Dey *v.* Chicago, M. & St. P. R'y Co., 45 Fed. Rep., 82.

Maloney *v.* American Tobacco Co., 72 Fed. Rep., 801, 802.

State of Indiana *v.* Alleghany Oil Co., 85 Fed. Rep., 870.

Arkansas *v.* Kansas & Texas Coal Co., 183 U. S., 185.

III.

The fact that the State of Washington owns certain public institutions of an educational or charitable nature which are maintained at the expense of the State is entirely inadequate to bring the State within the category of a proprietor injured as to its proprietary or civil rights.

The injury to the State as the owner of these institutions by reason of an increase of freight rates on supplies, &c., if competition between these two railroads be destroyed, is too theoretical, remote, and uncertain to afford the basis of an action for an injury to civil rights. Such a proprietary interest does not make it the duty and obligation of citizens of other States to obey mere police regulations which are intended to promote in a general way the common welfare of the State and its inhabitants.

IV.

It is further insisted on behalf of the defendants that the State of Washington has no law, either statutory or constitutional, which forbids any act alleged to have been done or to be in contemplation by these defendants, even if such act were done within the State of Washington.

The complainant cites sections 14, 16, and 22 of article XII of the constitution of the State of Washington as the basis of its allegation of violation and evasion by the defendants of the law and policy of that State.

These articles as cited are as follows:

"ART. XII, SEC. 14. No railroad company or other common carrier shall combine or make any contract with the

owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

"ART. XII, SEC. 16. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a competing line."

"ART. XII, SEC. 22. Monopolies and trusts shall never be allowed in this State, and no incorporated company, copartnership, or association of persons *in this State* shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity." * * *

Presumably because it did not make for the benefit of the complainant's case, counsel omitted to quote the concluding paragraph of section 22 of article 12. The omitted paragraph reads as follows:

"The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise."

Nothing more than a mere perusal of sections 14 and 16 is necessary to enable the court to see that none of the acts of the defendants or their stockholders or managers, set out in the bill of complaint, are within the terms of these sections.

Nor does section 22, when carefully examined, amount to

a prohibition of any of the acts alleged to have been done by the defendants.

The prohibition of section 22 is against incorporated companies, partnerships, or combinations of persons "*in this State.*" As a matter of fact and of law, neither of these defendants is a corporation of the State of Washington, if that is what is meant by the language quoted, nor is either of them doing any act "in the State" of Washington tending, directly or indirectly, to a combination or the making of a contract with any other company, foreign or domestic, for the purpose of regulating the transportation of any product or commodity.

All of the defendants are corporations of other States. All of the defendants and their stockholders and officers are doing the acts complained of within the jurisdiction of other States. The meetings of the railway companies are held respectively in the States of Minnesota and Wisconsin. The dividends are not paid in the State of Washington. It is not alleged that the boards of directors meet in the State of Washington. It is not alleged that either of the railroad companies has, directly or indirectly, combined or made any contract with any other company for any of the purposes mentioned in section 22.

As a matter of fact, none of the defendants have combined or made any contract for any of the purposes therein defined.

What is meant by "consolidation" and "combination" is well understood, and section 4304 of the Code of Washington indicates clearly what a consolidation of railroad corporations under the laws of Washington is understood to be.

Nothing in any of these sections forbids one person, whether a natural person or a corporation, from acquiring a

majority of the stock in two competing railroad companies. The prohibition is placed upon the companies themselves. It is their acts done for the purpose of consolidation and combination which are regulated, not the acts of the individual stockholders in selling their stock or transferring it to one person or a syndicate of persons for the purpose of control.

The omitted paragraph of section 22 indicates clearly that this section was intended to be a penal regulation, and that it was to be enforced only through laws passed by the legislature of the State; no such laws have ever been passed by the State of Washington; its legislature has not deemed it of sufficient public importance to provide, as directed by the constitution, for the enforcement of this section, either by penalties or by provisions for the forfeiture of corporate franchises.

Having declared the method by which this constitutional mandate should be enforced, namely, through laws passed by the legislature providing for (*a*) adequate penalties, (*b*) forfeiture of franchise, the State of Washington is limited to those methods for its enforcement. It cannot have also a remedy by injunction. The State attached no penalty to the constitutional provision, and obviously regarded it as inchoate and incomplete; it imposed the duty of final and perfecting legislation upon the legislature, but the work has never been completed and the State stands in the position of having made in its constitution a mere declaration of policy, which it has never provided the laws to carry into effect. It is with a very bad grace that it comes now to a Federal court and asks that court, in the exercise of its equity powers, to provide a sanction or penalty for the enforcement of a

constitutional mandate which the State has made no effort to enforce by the passage of proper laws.

This emphasizes in a very marked manner the point upon which the defendant insisted in the case of the State of Minnesota, and upon which they insist in this case, namely, that the State is endeavoring to supplement its own deficiencies through the power and process of the Federal Supreme Court, and by that means to affix a sanction to its police regulations where it has made no effort to enforce them within its own jurisdiction. It is a world-wide rule that such laws can have no inherent authority extra-territorially, and that the courts of one State will not lend themselves to the enforcement of the local policy or the penal or police laws of another sovereign, either within or without the territorial limits of the complaining sovereignty.

JOHN W. GRIGGS,

Of Counsel with Northern Securities Company.

The case of *Wood v. Seattle*, 23 Wash., 1, referred to on page 20 of this brief, is not in the brief given due prominence. In that case the court said, pages 20, 21:

"It is next said that the proposed ordinance, when considered in connection with the acquisition of the existing street-railway lines, creates a 'monopoly and trust,' and is therefore in violation of section 22 of article 12 of the state constitution. * * * The argument is that portions of the lines now in operation, and which may be absorbed by the proposed ordinance, are parallel and competing lines, and because of this provision the city is without power to pass an ordinance under which they may be combined or consolidated. Whether the proposed ordinance will have the effect of consolidating competing lines does not very clearly appear from the record, but, assuming that it will we cannot think that this section of the constitution was intended to be a limitation upon the legislative power to authorize such a consolidation whenever it may deem the public interests demand it. The prohibition is directed against combinations between corporations, companies, or individuals, made 'for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity,' and it is combinations of this character and for these purposes that constitute the monopolies and trusts which the constitution interdicts. Elsewhere in the constitution ample power is given the legislature to correct and prevent abuses such as the respondents contemplate, by fixing maximum rates and charges for the transportation of passengers and freight; and it was from this power that the constitution-makers intended that relief should be found from (to quote from that instrument) 'discrimination and extortion in the rates of freight and passenger tariffs,' rather than from the fancied relief to be obtained from competing lines."

The other provisions of the constitution to which the court refer in the above language are sections 13, 15 and 18 of article 12, which reads as follows:

SEC. 13. "All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control * * *. All railroad companies

shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

SEC. 15. "No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company, or individual, shall be delivered at any station, landing, or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

SEC. 18. "The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the State, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established, and its powers and duties fully defined by law."

Supreme Court of the United States.

OCTOBER TERM, 1901.

ORIGINAL.

STATE OF WASHINGTON,
Complainant,
vs.
NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY AND NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.

BRIEF ON BEHALF OF DEFENDANT RAILWAY COMPANIES UPON MOTION FOR LEAVE TO FILE BILL.

If the organization and acts of the Northern Securities Company infringe upon any rights of the State of Washington the state is certainly entitled to redress, and if the bill now presented shows such an infringement and makes out a case of which this court, without departing from its settled practice, may properly take cognizance, the defendants have reason to welcome rather than to oppose the course of the state in resorting to this, the highest court in the land, whose decision will everywhere be received as authority.

This court has, however, by a series of decisions, deter-

mined that not every suit brought by a state against citizens of another state is the proper subject of cognizance, has defined what original suits a state may and what suits it may not bring against citizens of another state, and has wisely determined that the question whether an original suit proposed to be brought falls within one class or another —whether the court will or will not take cognizance of it— shall be passed upon at the outset, when the declaration or bill is offered for filing.

In view of the character of the original jurisdiction of the court, the question whether it shall be exercised in a given case is of an importance by no means limited to the effect of the decision on the parties to it. In the recent case of *Minnesota v. Northern Securities Company* the court indicated a willingness, if not a wish, to hear argument, by ordering notice to be given of the motion to file the bill. That case went off on a question of defect of parties. In *this* case that defect does not exist, but in respect of other questions sought to be raised, this case closely resembles that of the State of Minnesota. In determining questions so important, we assume that the court will now, as before, desire the assistance of counsel.

We accordingly submit the following considerations as showing that the state has not in its bill made a case of which the court can, without departing from its settled doctrine and practice, take cognizance.

Whether the state has made such a case depends on the nature of the right, if any, asserted in the bill, which the suit is brought to enforce, the nature of the violation, if any, of the right, which the state seeks to prevent or redress, and the nature of the relief sought, whether within or beyond the competency of the court to grant.

The gist of the bill is:

That certain stockholders of the two defendant railway companies (one a corporation of Minnesota, the other a corporation of Wisconsin) have caused to be formed under the laws of New Jersey the Northern Securities Company, with the intention of making that company the holder of a majority of the stock of the two railway companies; that, in pursuance of this plan, the Securities Company has acquired a majority of such stock. The articles of incorporation of the Securities Company are set forth, and it appears (and must be here presumed) that it has all the power of a natural person to buy, hold, vote, and sell stocks; but its right to hold and vote the stock in question is challenged because the lines of the railway companies (some part of which is in Washington) are parallel and competing.

Though the alleged wrongful acts were done, not in Washington, but in New Jersey, the complaining state says they are illegal and should be enjoined by this court because in violation of those sections of article 12, constitution of Washington, reading as follows:

> "SEC. 14. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."
>
> "SEC. 16. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a competing line."
>
> "SEC. 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any

manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise."

The State of Washington is a political corporation with full sovereignty, except so far as surrendered to the United States, over the district or country known by that name. Among the powers surrendered to the United States is that to regulate interstate commerce, and as to that commerce the State of Washington has no power beyond that of legislating in the way of police to protect the lives, health, and well-being of its citizens. It has no power to regulate that commerce. But as to commerce local to the State there is now no question as to its power to fix reasonable railway rates (*Chicago, Milwaukee & St. Paul R'y Co. v. Minnesota*, 134 U. S., 418; *Minneapolis Eastern R'y Co. v. Minnesota*, 134 U. S., 467; *Smyth v. Ames*, 169 U. S., 466); to compel roads to make connections with other railroads for the purpose of transferring cars (*Wisconsin Railroad Co. v. Jacobson*, 179 U. S., 287); to regulate the running of passenger trains so as to accommodate communities along the lines (*Lake Shore R'y Co. v. Ohio*, 173 U. S., 285); to regulate the heating of passenger cars and the manner of running trains (*New York R. Co. v. New York*, 165 U. S., 628); and generally to regulate the operation of railroads, require the construction of proper stations and facilities, bridges and street crossings, or the performance of any other service reasonable in the maintenance and operation of a

public highway (*Cleveland R'y Co. v. Illinois*, 177 U. S., 514; *State v. Minneapolis & St. Louis R'y Co.*, 80 Minn., 191).

In short, as to local rates and facilities the State of Washington has full power so long as its requirements are reasonable. Neither the state nor any citizen has any right to demand or require what is unreasonable, and certainly no equity to come into this court to obtain unreasonably low rates by injunction. Reasonably low rates it may obtain by its own statutes and in its own courts. The bill does not allege any accomplished injury, but complains of acts which it is alleged have a tendency to injure. The bill does not say that any rate has been raised, or that any rate is unreasonably high, or that any reasonable facility of traffic is not furnished. Neither the state nor its citizens can suffer any actual injury unless, either unreasonably high rates are charged, or inadequate facilities furnished. As to these matters the state has the remedy in its own hands in its own jurisdiction. The original jurisdiction of this court in equity cannot, we submit, be invoked where the state has in its own legislature and courts a full, adequate, and perfect remedy.

In this bill the state seeks in a foreign jurisdiction a remedy by injunction to compel the Northern Securities Company, a New Jersey corporation, to conform to and obey what it conceives to be its law and policy; this although the Securities Company is lawfully organized in the State of New Jersey with power to buy and hold stock, and is doing no act which it is not authorized to do by the law of the state of its organization. Its acts were all done in that state and none of them in the State of Washington. The bill

asks this court to restrain by injunction a citizen of New Jersey from doing there acts entirely lawful according to New Jersey laws and sanctioned by the policy of that state, on the allegation that those acts either violate, or evade, or tend to render nugatory, laws of the complainant state. The sole ground of complaint is the alleged violation in New Jersey of certain enactments contained in the constitution of Washington. The injunction prayed for would be nothing more or less than compelling the defendant to obey in New Jersey the laws of Washington.

The sum and substance of the grievance is, that the ownership of the shares of the two defendant railway companies, formerly vested in several persons, has now been united in one holder, and that holder a corporation. But reference is made to no Washington statute, and none exists, which prohibits individuals or copartnerships or private corporations having charter authority from acquiring and holding stocks of parallel or competing railroad companies. On the contrary, the corporation laws of the State of Washington (1 *Ballinger's Code*, sec. 4261) make stock personal property, and of course it is salable as such according to the law of the place where it is sold. The provision in the statute quoted, that the stock shall be transferable only by registry on the corporate books, is a declaration that, except as far as so limited, it is transferable according to the customs of the commercial world (*Bank v. Lanier*, 11 Wall., 369, 377).

There is not one syllable in the constitution or statutes of Washington which purports to abridge the right of individuals, partnerships, or corporations to buy stock, and the complainant is driven to *infer* so important a prohibition.

And more than this. The right asserted by the State of Washington—the right and the only right which she claims has been violated—is the right to dictate who may and who shall not be shareholders in two railway companies, one chartered by Wisconsin, the other by Minnesota. Washing-

ton may prescribe the qualifications for shareholders in companies of her own creation. She may authorize or forbid the purchase of shares in foreign companies by her own corporations and possibly by her individual citizens. But the right here asserted, to dictate that a corporation of New Jersey shall not become a shareholder in a corporation of Wisconsin or of Minnesota, has no basis whatever in principle or authority. Every state in the Union—certainly every state through which these railways run—has as valid a claim as Washington to the right she here asserts, and it is needless to picture the results of their exercise of it.

The court should not allow this bill to be filed if it plainly appears that no decree could be rendered upon it in favor of complainant. The court considered, in *Pearsall v. Great Northern Railway Company*, 161 U. S., 646, 671, and in *Louisville and Nashville Railroad Company v. Kentucky*, 161 U. S., 677, 693, a statute of Minnesota and a provision of the constitution of Kentucky prohibiting the consolidation of parallel and competing roads, which were stronger and broader than section 16, article XII, of the Washington constitution. The court said in the former case (pp. 671, 672):

> "Doubtless these stockholders could lawfully acquire, by individual purchases a majority, or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests, as such, in common. This, though possible, would not be altogether feasible, and would require considerable time for its accomplishment. In a few years the two companies might by sales of the stock so acquired, become completely dissevered, and the interests of the stockholders of each company thus become antagonistic."

And in the latter case (p. 693):

> "It is true, as was observed in *Pearsall v. The Great Northern*, that the stockholders of the L. & N. Co. may individually become the purchasers of the

Chesapeake Co. at a judicial sale, and may organize a new corporation, but it would still be a corporation separate and distinct from that of the L. & N. Co. The inhibition of the constitution is not against the sale to individuals, though they may chance to be stockholders in a competing line, but against the acquisition by a railway, in any form, of a parallel or competing line."

See also, to the same effect, *Havemeyer v. Havemeyer*, 43 N. Y. Superior Ct., 515; *Commonwealth v. R'y Co.*, 139 Pa., 457, reaffirming doctrine held in 132 Pa., 591; *White v. Ryan*, 15 Pa. C. C., 170.

We submit that the court in the language above quoted passed upon the fundamental and essential question presented by this bill, so far as concerns so-called consolidation of competing railways. If any law could, it is clear that no law has attempted to say that one or several individuals could not purchase and hold all the stock of two competing roads. So doing is neither prohibited by morality, nor by statute, nor by any rule of the common law. It is perfectly innocent and lawful. If one man may buy stock in two competing roads, doubtless a partnership may; or several men, having already acquired the stock, may lawfully form a partnership and turn in the stock as partnership assets; or a corporation, having by the law of its organization the same power which an individual has to buy and hold stock, could buy and hold the stock of parallel and competing railways as an individual might; or several individuals, having acquired stock in competing roads, might lawfully form a corporation and might make the stock corporate assets as lawfully as they might make it partnership assets.

This right is not impaired by any of the sections of the Washington constitution cited. The prohibitions of section 16 are directed wholly against competing railway companies. A corporation and its shareholders are different entities (*Baldwin v. Canfield*, 26 Minn., 43; and see *Bank*

of U. S. v. Planters' Bank, 9 Wheat., 904, 907, decided in 1824, when, for purposes of jurisdiction, the court looked to the citizenship of the shareholders in suits against corporations). Neither a single stockholder, nor a majority of stockholders, nor 95 per cent of the stockholders are the corporation (*Humphreys v. McKissock*, 140 U. S., 304, 312). The court held in *Pullman Car Co. v. Missouri Pacific R'y*, 115 U. S., 587, that ownership of all the stock of a corporation did not constitute "control," saying, pp. 596, 597:

> "We are also of opinion that the railroad of the St. Louis, Iron Mountain and Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly the St. Louis, Iron Mountain and Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all or nearly all its stock, and in that way can determine who shall constitute its board of directors, but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain and Southern Company is in no legal sense controlled by the Missouri Pacific. * * * The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself. Practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation own its property, but they are not the managers of its business or in the immediate control of its affairs. Ordinarily

they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain and Southern to control the election of directors, and this it has done. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

The provision of the constitution forbidding either of two competing *railroad* companies from doing certain things is upon its face and by its plain meaning no more a prohibition to the stockholders of either in their individual capacity than the provision in the constitution of Minnesota (art. IX, sec. 5) that "the state shall never contract any debts for works of internal improvements, or be a party to carrying on such works," is a prohibition to its citizens. This constitutional provision is held not even to apply to cities (*Davidson v. Commissioners*, 18 Minn., 432, 442).

To charge the defendant railway companies or their directors with responsibility for their stocks being held by one person or corporation is absurd. A corporation and its board of directors have no right to decide who shall hold its stock; that matter does not concern either the corporation or board. Suppose an individual or a securities company had presented shares to the board of either of these railway companies for transfer on its books. Could the board properly have said, "We decline to recognize your

ownership, because we apprehend you have also bought, or are seeking to buy, stock in a competing railway, and this we conceive to be harmful to public interests?"

If the legislature had intended to include individuals, partnerships, and corporations other than railway companies, the prohibition would have been directed in plain terms against them. The insertion of a few simple words was all that was necessary to express the intention now claimed by the state, and it cannot be conceived that the legislature had that intention and yet refrained from so easy an expression of it.

The prohibition is against consolidating the "stock, property, or franchises" of one railroad corporation with any other railroad corporation owning a competing line. The term "consolidate" was defined by the first legislature of Washington which met soon after the adoption of the state constitution, and which doubtless contained many of the framers of that instrument (1 *Ballinger's Code*, sec. 4304). This statute opens with language which follows almost word for word the provisions of section 16 in article XII of the constitution: "Any such railroad corporation may consolidate its stock, franchise and property with any other railroad corporation * * * *and become one corporation.*" The act then provides that articles shall be adopted by each corporation and filed in a public office stating the terms of the consolidation.

This statute contains a correct definition of the term "consolidate," according to its usual signification (2 *Morawetz on Corp.*, sec. 939, and cases cited; *Green County v. Conness*, 109 U. S., 104, 106; *Central Railroad v. Georgia*, 92 U. S., 665, 670, 671; *Tennessee v. Whitworth*, 117 U. S., 139, 147; *Archer v. R'y Co.*, 102 Ill., 493, 503; *Beach on Corporations*, sec. 328; *State ex rel. Nolan v. Montana R'y Co.*, 21 Mont., 221; *Gore v. R'y Co.*, 19 Abbott's New Cases, 193, 210).

As this court pointed out in the *Pearsall case*, the ownership by one individual or set of individuals of stock in two

competing railway companies is not consolidation and not within the meaning or spirit of the statute, because at any time the stock so acquired may be parted with, and any relations between the companies become completely dissevered, and the interests of their respective stockholders antagonistic.

But the bill charges that the acts complained of are an *evasion* of the constitution. It is not alleged, however, that there is any subterfuge or concealment. The real transaction is just as it appears. Individual stockholders of the two railway companies have seen fit to turn their stock over to a corporation alleged to have been formed with that intent and purpose. On its face this is either within the statutes or outside of them. It cannot be held illegal as an evasion of the statute, without saying that this court in the *Pearsall case* and in the *Louisville & Nashville case* pointed out to the parties how to evade the statute.

The notion that to do a thing not forbidden by statute, but which may produce the same or some of the same results as a thing which is forbidden, is illegal because it is doing indirectly that which the law forbids doing directly, is responsible for some loose argument and decision. It should have received its quietus from recent decisions in the House of Lords and Privy Council (*Bullivant v. Att'y Gen. of Victoria* (1901), A. C., 196; *Simms v. Register of Probates* (1900), A. C., 323).

What one man may lawfully do singly, two or more may lawfully agree to do jointly—that is, if the act is not immoral or wrongful. For a number to conspire to do a thing wrong or unlawful may be a crime, though for one to do

the same thing may not be a crime. But unless we greatly misunderstand the law, a thing which it is rightful and lawful for one person to do may lawfully be done by a combination of persons. As Justice Mitchell very well said in *Bohn Mfg. Company v. Hollis*, 54 Minn., 223, 234:

> "What one man may lawfully do singly, two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful act of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants. If the act be unlawful, the combination of many to commit it may aggravate the injury, but cannot change the character of the act. In a few cases there may be some loose remarks apparently to the contrary, but they evidently have their origin in a confused and inaccurate idea of the law of criminal conspiracy, and in failing to distinguish between an unlawful act and a criminal one. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to conspire to commit an unlawful act, which, if done by one individual alone, although unlawful, would not be criminal. Hence, the fact that the defendants associated themselves together to do the act complained of is wholly immaterial in this case. We have referred to this for the reason that counsel has laid great stress upon the fact of the combination of a large number of persons, as if that, of itself, rendered their conduct actionable. (*Bowen v. Matheson*, 14 Allen, 499; *Mogul Steamship Co. v. McGregor*, 23 Q. B. Div., 598; (1892) App. Cas., 25; *Parker v. Huntington*, 2 Gray, 124; *Wellington v. Small*, 3 Cush., 145; *Payne v. Western & Atlantic R. Co.*, 13 Lea, 507)."

The case of *Mogul Steamship Co. v. McGregor* will be found a very satisfactory authority on this question.

Whatever injurious effect may be likely to follow from a misuse of power incident to ownership of a majority of

shares in two competing railway lines, that power is no more likely to abuse because it rests in several men, or in a corporation, rather than in one man.

The most astonishing extreme reached by the bill of complaint is the statement that the Northern Securities Company is "a railroad corporation" within the meaning of the laws of Washington. Yet it is only upon this forced and preposterous contention that the complainant can possibly point out any supposed breach of her laws. This branch of the complainant's contention need not be further noticed, because it is clear that the securities company has no franchise either to build, operate or manage a railway, its power being limited to the owning of stock and doing such acts as an individual owner of stock might lawfully do.

While it may be conceded, in accordance with the doctrine of *Attorney General against The Railroad Companies*, 35 Wis., 425, and *Stockton v. Central Railroad Company of New Jersey*, 50 N. J. Eq., 52, that a state may in a proper case in its own courts enjoin corporations to obey its laws within its own territory, there is no precedent, we submit, of a state or other sovereign power enjoining in the courts of a foreign state obedience to the statutes of the complaining state. It is a general principle that statutes can be enforced by a state within its own jurisdiction only (*Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265).

This rule, as we understand it, is not confined to mere

penal statutes, but is of general application. It is a general principle of international law that the statutes of one country have no effect or operation in another. Can it be possible that a statute of Washington is rendered enforceable in the courts of foreign countries by the omission of penalties when the same statute would not have been enforceable if penalties had been added? Do police statutes without penalties differ in principle from statutes with penalties? Surely, the nature of the law is the same in either case, and in either case may properly be given the same extraterritorial obligation. A penalty is simply one form of punishment for disobedience; and if a law imposing a penalty cannot be enforced extraterritorially a different rule cannot be applied to the same law because it omits the penalties and merely commands obedience (*Security Trust Co. v. Dodd, Mead & Co.*, 173 U. S., 624, 629).

Can one nation sue in the courts of another to collect its customs or other taxes? In the case of *King of Spain v. Oliver*, Peters C. C., 276, it was conceded that the King could sue for the customs duties claimed only on proof of a contract or bond to pay them. See the case explained by Mr. Justice Gray in *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 290.

Suppose a number of citizens of New York are engaged in that state in a scheme which, if successful, would fraudulently conceal from taxation property in Washington liable thereto or hinder the collection of taxes thereon. Could the state maintain a suit in this court to restrain such proceedings of those persons?

Suppose the State of Washington has a stringent pure-food law forbidding the sale within the state of adulterated goods. One or more persons in another state, citizens of that state, are engaged in making adulterated food products to be secretly shipped into Washington, and there sold to consumers. Would a bill to enforce such a statute by en-

joining the carrying out of such scheme be entertained in this court?

Suppose the State of Washington, like most of the other states, has a stringent insurance law forbidding unlicensed companies from insuring property in the state. One or more companies of other states are, without license, secretly issuing policies within the state. Can the state sue in this court to enjoin such violation of its statute?

Suppose two railway companies, incorporated in Illinois, operate lines in Washington, whose statutes prohibit any discrimination in railway rates as between persons or places. Those companies in Illinois agree upon discriminating rates upon traffic between points in Washington. Could the State of Washigton sue in this court to enjoin those Illinois corporations from thus violating its statutes?

And in any one of these cases, could the state maintain such a suit in the courts of another state or country, or in any jurisdiction but its own?

If the state can sue in equity in another jurisdiction to enjoin a threatened violation, or a continuance of an existig violation, of any of these statutes, why can it not, after such violation, sue at law in another jurisdiction for the statutory penalty made recoverable in a civil action, or for damages?

That it cannot sue at law is plainly held in *Wisconsin v. Pelican Ins. Co., supra.* And what reason can be given in support of the right to sue in equity in a foreign jurisdiction to enforce such statutes which would not equally sustain an action at law?

If a state may sue in a foreign jurisdiction to enjoin an obstruction to the collection of taxes on personal property within its limits, it may certainly sue there to collect them, if by its laws such taxes are collectible by action. The right of the state to have the collection of taxes unobstructed is no greater than, and no different from, its right to have the taxes paid. An obstruction of collection and a di-

rect refusal to pay are a violation of the same statutory right of the state. Could the state sue in this court to collect its taxes?

If the state can, as a sovereign, bring this suit in this court to enjoin the violation of the statutes here involved, it might—and every other state in like circumstances might—bring an original injunction bill in this court in every one of the cases supposed and in numberless others—indeed, in case of any attempted violation of almost any of its statutes of a public and governmental nature, especially any of the statutes passed in the exercise of its police power—and the original cases on the docket of the court would be the rule as they have heretofore been the exception.

In the *Pelican Insurance case* (page 289), the court, in speaking of its original jurisdiction under the Constitution, said:

> "The grant is of 'judicial power,' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all."

That is, this court will not originally entertain a suit brought by a state which the state, on principles of international law, could not maintain in the courts of England or of one of the other states. We think the most diligent search will fail to find any case in England or in this country where a state or sovereign has maintained in any foreign court a suit solely to enforce its own laws. Undoubtedly a state may sue to recover its own *property*, and such a case could be maintained though the title to the property had passed in the complaining state by virtue of a statutory forfeiture. So suits can be maintained in a foreign country to enforce a contract, good by virtue of the laws of the country where it was made. So an action may be maintained in a

foreign jurisdiction for death, although the cause of action rests on a statute, and suits by creditors to recover against stockholders or officers of a corporation can sometimes be maintained, though the liability arose out of a foreign law. But in all these cases the courts enforce, not the law of a foreign state, but a right created under it. The foreign law has already enforced itself and done its work within the foreign territory in creating the right, whether of property or contract, and needs not, nor is it capable of, further enforcement in the particular case, whether in the domestic or in foreign courts. This suit is not to recover property or collect a debt, but is brought purely to enforce the foreign law. It is, moreover, a suit to aid the complaining state in enforcing its laws by injunction. The absence of any precedent for such a suit should be conclusive.

Section 14 of article XII of the Washington constitution does not touch the case. It is a prohibition against the pooling of earnings by common carriers. Substantially the same provision was in that section of the constitution of Kentucky considered by this court in the *Louisville &Nashville case* and it did not prevent this court from saying that the same persons might lawfully acquire the control by stock ownership of two competing railways. Moreover, the prohibitions of this section, like those of section 16, are directed only against action of *carrying corporations as such.*

The other section referred to (section 22 of article XII) is not completely quoted in the bill of complaint. It closes by this declaration:

> "The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise."

The section is evidently not self-executing. It does not in and of itself constitute a sufficient rule, either defining the right or duty created, or providing means for its enforcement. While the provision might be regarded as mandatory to the legislature to enact the needful legislation, that legislation not having been passed, the constitutional section standing alone merely indicates principles, without laying down any rules by means of which those principles may be given the force of law (*Cooley's Constitutional Limitations*, pp. 99, 100). On the latter page Judge Cooley says:

> "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law."

In a much stronger case this court held that the constitution of Mississippi was not self-executing (*Groves v. Slaughter*, 15 Pet., 495, 499-501). The constitution of Mississippi said, "The introduction of slaves into this state as merchandise, or for sale, shall be prohibited from and after the first day of May, 1833." (See also *French v. Teschemaker*, 24 Cal., 518).

This court is without the benefit of any decision of the supreme court of Washington as to whether this section is self-executing, or as to (*a*) whether it applies to any except corporations organized in that state, or (*b*) whether it applies to acts done outside the state, or (*c*) as to what is a

monopoly or trust within its meaning, or (*d*) as to what is a *combination* within its terms, or (*e*) as to whether the individual acts of stockholders, as distinguished from their acts on behalf of the corporation, are intended to be reached.

In *Wood v. Seattle*, 23 Wash., 1, 20, 21, the supreme court of the complaining state held that this section did not prohibit the *consolidation* of competing street railway lines.

Little need be said as to those allegations of the bill showing the state to be a land owner and shipper. Up to this point we have endeavored to show (*a*) that the acts of the defendants are lawful, (*b*) that whether lawful or not the State of Washington cannot maintain this suit. If we are correct on either of these propositions, it disposes of the whole bill, including the allegations just mentioned.

In respect of these allegations the state devests itself of its sovereign character, and must make in its bill the case required to be made by any individual land owner or shipper suing in any court of general jurisdiction.

No injury has yet been sustained. True the railway companies are not yet building branches into the state's unimproved land, but that is a thing they have made no contract to do and are not obligated to do. It appears from the bill they and their predecessors have steadily refrained from doing so during all the years of their existence. If the omission to build these branches has gone on for many years without actionable injury to the state, it is hard to see how the continuance of the omission from November 13, 1901, until the present time is an injury entitling the state to an injunction. Neither company has any inducement to build these branches except the profit to be derived from them, and that inducement will be as strong and the branches

are as likely to be built, the majority of stock being owned by the Securities Company, as would be the case if the stock were distributed among many holders.

If the state as a land owner and shipper may bring a bill like this, so may every land-owner in Washington and every one in Washington, or out of it, who is shipping, or likely in the future to ship over either railway; for the gist of the complaint is not that the state has already been overcharged on any shipment, nor that either railway has threatened to overcharge it on any shipment it is about to make, but simply that from the infirmity of human nature the state apprehends an injury.

A state as sovereign may under the doctrine of *Attorney General vs. Railway Companies*, 35 Wis., sue in its own courts to compel corporations within its jurisdiction to obey its laws. That jurisdiction does not depend on the existence or non-existence of an adequate remedy at law and may be exercised without showing damage. But a state as a shipper can bring no suit in a foreign jurisdiction except upon those principles which control suits by other shippers. Can it be possible that every shipper on these railways could maintain injunction suits to restrain the Northern Securities Company from holding stock in the two defendant railway companies? As a shipper and standing like other shippers, the state could not maintain an injunction bill in a foreign court without showing the inadequacy of its remedies at law. The state as a shipper has, like other shippers, a plain, adequate, and complete remedy to test at law the reasonableness of rates.

GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Of Counsel for Defendant Railway Companies.

No. 9
No. Origl -
State of Washington
vs
Northern Securities Co.

Allegation as part of paragraph VII of Bill of Complaint:

That the Northern Pacific Railway Company was organized as herein set forth for the purpose of purchasing the property, lines and franchises of the said Northern Pacific Railroad Company situated in the State of Washington and elsewhere, as in this complaint set forth, and for the purpose of doing business and operating said railroads as a common carrier in said State; that the articles of incorporation of said Northern Pacific Railway Company contemplate and authorize said Company to operate railroads in the State of Washington, and were entered into with reference to the laws of the State of Washington.

Allegation as part of paragraph IX of Bill of Complaint:

That the mutual agreement or arrangement, given in substance in this paragraph, was entered into at the city of New York.

The case of *Wood v. Seattle*, 23 Wash., 1, referred to on page 20 of this brief, is not in the brief given due prominence. In that case the court said, pages 20, 21:

"It is next said that the proposed ordinance, when considered in connection with the acquisition of the existing street-railway lines, creates a 'monopoly and trust,' and is therefore in violation of section 22 of article 12 of the State constitution. * * * The argument is that portions of the lines now in operation, and which may be absorbed by the proposed ordinance, are parallel and competing lines, and because of this provision the city is without power to pass an ordinance under which they may be combined or consolidated. Whether the proposed ordinance will have the effect of consolidating competing lines does not very clearly appear from the record, but, assuming that it will we cannot think that this section of the constitution was intended to be a limitation upon the legislative power to authorize such a consolidation whenever it may deem the public interests demand it. The prohibition is directed against combinations between corporations, companies, or individuals, made 'for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity,' and it is combinations of this character and for these purposes that constitute the monopolies and trusts which the constitution interdicts. Elsewhere in the constitution ample power is given the legislature to correct and prevent abuses such as the respondents contemplate, by fixing maximum rates and charges for the transportation of passengers and freight; and it was from this power that the constitution-makers intended that relief should be found from (to quote from that instrument) 'discrimination and extortion in the rates of freight and passenger tariffs,' rather than from the fancied relief to be obtained from competing lines."

The other provisions of the constitution to which the court refer in the above language are sections 13, 15, and 18 of article 12, which read as follows:

SEC. 13. "All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control * * *. All railroad companies

shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

SEC. 15. "No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company, or individual, shall be delivered at any station, landing, or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

SEC. 18. "The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the State, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established, and its powers and duties fully defined by law."

10 Apl., 1902.

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Supreme Court of the United States.

OCTOBER TERM, 1901.

9 Original.

STATE OF WASHINGTON,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, and NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.

Since the brief was printed, our attention has been called to an opinion which was delivered orally in open Court, at Savannah, on June 30, 1893, by Mr. Justice JACKSON, overruling Judge SPEER.

The opinion was taken down and reported as herewith shown, by the Court stenographer, and this copy has been obtained through Mr. Adrian H. Joline, who was of counsel and was present and heard the opinion delivered. It is the same opinion to which reference is made by the Circuit Court of Appeals in 62 Federal Reporter, pp. 328, 333, 334.

The opinion was withheld from publication at the time, because of the desire of Mr. Justice JACKSON to revise the same as to form before final publication; but he died before accomplishing his purpose.

C. W. BUNN,
Of Counsel for defendant Railway Companies.

IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA.

ROWENA M. CLARKE ET AL. AGAINST THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA ET AL.	Bill, Etc. Final Decree.

Opinion of Mr. Justice Jackson, June 30, 1893.

JACKSON, Justice:

This question, gentlemen, arises under a very peculiar lawsuit, to say the least of it. Mrs. Clarke, with fifty shares of the capital stock of the Central Railroad and Banking Company, files her bill in this Court on the 4th of March, 1892, in which she seeks two distinct things. She seeks to set aside a lease made on the first of June, 1891. Now, upon one question of fact which my brother relies on, that this lessee, or its agent, to whom it turned over the property, did, between 1891 and March, 1892, wreck it. The reports of the directory, the showing of the books, the statements of the receiver negative that fact. The thing was wrecked before June, 1891. That is not material.

Upon the filing of her bill to effect the termination of the lease and to deny to the holder of 42,200 shares the right to vote and to declare the Directory then in power which she had herself helped to select—voted for them—upon the filing of that bill, I say, the Georgia Pacific Railroad Company, the lessor and the only

party to the contract with the Georgia Central, and as well as the Richmond and Danville Railroad Company, made a prompt appearance, and before filing answer, the latter Company by its attorney notified the Court that it did not claim any right under the lease whatever. Then the companies there after a few days, file their respective answers and disclaim the lease entirely. I have not found in this record, and counsel have not called to the attention of the court, any legal connection between the Richmond and Danville and that lease. It is stated by the Georgia Pacific, and by the evidence in this case, that the Georgia Pacific in 1888, having leased its lines to the Richmond and Danville, when it perfected a lease, or thought it had perfected a valid lease of the Central Railroad Company, says it turned over that to the Richmond and Danville Railroad Company. That is all. What liability, therefore, and what legal connection had the Richmond and Danville with the Georgia Central ? So far as the record discloses, not a single thing. But that is immaterial.

After that disclaimer of the lease, which terminated one of the questions of litigation in that suit, and under which the receiver was appointed, the court made an order that what was called "A legal election" should be held on the 14th of May, 1892, having previously denied the right of the holder of the 42,200 shares to vote at that election, having put an injunction upon the legal holder of that stock from voting it and the Central Company from accepting the vote of that stock. That election was held. A new Board of Directors were elected by the minority. What then, I say, what reason then existed for the continuance of the receivership ? There was none. The two stockholders, Mrs. Rowena Clarke, with fifty shares, and the Terminal Company, call it the trustee of the Terminal Company, or trustee of the Georgia Company, it does not matter which, had a private question between two stockholders. I say, therefore, that from and after the 14th of May, 1892, when the action of the court—

right or wrong in originally appointing the receiver—when the new Directors were elected, that receivership ought to have terminated as ending that question.

It was not terminated. On the 4th of July, 1892, the Central Company came into court and acknowledged practically its insolvency and asked for an administration of its assets. Rowena Clarke's bill of course after the election continued here only on the question as to whether the 42,200 shares of the Capital stock was entitled to vote.

I pass also the question as to the jurisdiction of the court on the regularity of the filing of this bill. In respect to the jurisdiction, I will say that Mrs. Clarke, as a citizen of the State of South Carolina, had the right to bring suit in the Federal Court against a corporation of Georgia and against two other corporations that were not citizens of Georgia; and if the latter corporations desired to raise the question of jurisdiction—I mean any point as to the jurisdiction of the court—they should have appeared and excepted to that jurisdiction. They did not do so and they came lawfully within the authority of this court to deal with them on these questions. Without considering whether the complainant in this case has shown a strict compliance with the 94th Rule, in having failed to invoke the exercise of the corporate management for authority to sue in the name of the corporation to set aside the lease, I think there is some doubt as to whether that rule was strictly complied with, but that is not material to the question under consideration.

The question under consideration is whether that injunction on the 42,200 shares held by the Central Trust Company, under the circumstances familiar to you, and which I will recite in a moment, whether those shares are entitled to vote in an election for directors of the Central Railroad Company. Certain individuals forming a syndicate buy up 40,000 shares. The Terminal Company organized, and chartered reg-

ularly by a sister State, with express authority to purchase and hold stocks and bonds in any of the railroads with the designated territory, within the designated State, has purchased 2,200 shares. Is there any law of Georgia that forbids that purchase? Was there any constitutional provision of Georgia that nullified that purchase, or rendered it illegal—a purchase made not in the State of Georgia, a contract made not with any Georgia corporation or Georgia individuals? Where is the constitutional provision of the State of Georgia, or its power either by legislation or constitutional provision to prohibit a lawfully organized corporation created by the State of Virginia, with express power to own and purchase stocks and bonds where is the power in the State of Georgia, in her legislature or her constitution to prohibit the purchase of that lawful property, issued and created under our own laws and put out before the world as salable? It does not exist. I concede that the State of Georgia may put in limitations and restrictions upon corporations in respect to the amount of property they shall acquire; in respect to the amount of stock they may authorize a corporation to issue; but I say that when that corporation has issued that stock, when it goes abroad as property, there is no power in this land that can deny to the owner the right to sell it, nor deny to the individual the right to buy it; and, if a corporation is created by any State with power to own and purchase stock, that that corporation is entitled to buy that stock, and that Georgia in her constitution and in her legislature could not prohibit it. Well, a syndicate of gentlemen, I do not care—it is wholly immaterial what their relations were to another corporation—they buy, and counsel for Mrs. Clarke has urged upon the court, they buy forty thousand shares of stocks for the purpose of controlling it as a syndicate for speculative purposes and to control the property of the Georgia Central. Any law to forbid that?

They were not a railroad Company. They were not in competition with any railroad company in the State of Georgia. Is it possible that this constitutional provision should be so construed as to say that you, Mr. Charlton, cannot buy up all the stock of the Georgia Central Railroad Company if you please, if you are able to do it? That would hardly be said to be in violation of the policy of the Georgia law, and when we come to speaking about State "policy" you are speaking about a very grave thing. But under the laws of Georgia and under this constitutional provision any private citizen had a right to buy any and all stocks that had been issued by the Georgia Central Railroad Company; he had an equal right to buy stocks of any and all other corporations. This syndicate bought up 40,000 shares of stock for the purpose of speculation. That is legitimate. They buy it up for the purpose of having a controlling stock interest in that property. That was legitimate. It brought it in competition with no Georgia road. It was not a contract or agreement made within the State of Georgia—made outside—and there is no Georgia Law, constitutional or legislative, that could deal with it, control it, or declare it illegal. What, then, do they do? They form a North Carolina corporation, called the Georgia corporation. Now, it was wholly immaterial whether it was a valid corporation or a mere association of individuals, wholly immaterial. The ownership of that stock, the holding of it by the individuals, or by the association or by the corporation, did not affect any right or violate any law of Georgia. The Richmond and West Point Terminal Company, under authority, under the powers of its charter, buy that stock from the Georgia Central.

Was that a Georgia Contract? Was that a Georgia agreement? Was that a contract that affected competition in Georgia?

It was not a contract under the Georgia law. Georgia law could not deal with it. The powers of

those two corporations were all that any court can look at and say whether it way a valid contract between them. The authorities have been read almost to confusion. They misapprehend the application bearing upon this question. The powers of corporations are derived from the sovereign that creates them. When they come into another jurisdiction, and make contracts, their contracts are governed by the jurisdiction of the State and by the laws of the State in which they make their contracts. That is all 13 and 14 Peters ever decided and all that has ever been decided by the Supreme Court of the United States, running from the case of the Augusta Bank down to the present time.

It was, therefore, a wrong proposition to say that the contracts of the individuals that acquired this stock—the contract by which they put it into the Georgia Company, created by the laws of North Carolina, and subsequently acquired by the Terminal Company under its charter powers in its contract with the North Carolina corporation. It was so required. It was held by them—jointly or severally is immaterial. They issued bonds upon it as security—put it in the hands of the Central Trust Company, as trustee for the bonds, which it was pledged to secure. Negotiable securities were passed into the country and from hand to hand, and carried full equity with them, and now we are told that those bondholders—that the security in the hands of the trustee is not a transportation corporation; that that trustee shall not be allowed to vote that stock. We may be sensitive about outside ownership of property in the States. Our State pride may run away with us sometimes in thinking that we ought to exclude foreigners—that we ought to exclude persons who have no identification with the State; but, gentlemen, you are dealing with private property and private rights here that no State can encroach upon, no State can violate.

Now, the Central Trust Company is the holder of that stock under a private arrangement between the Terminal Company and the North Carolina Company, I will call it for short, a certain arrangement under and by which the Central Trust Company is to vote that stock until after a default on the bonds which it was put in the Central Trust Company to secure.

The Terminal says, "You vote my two thousand shares," and the North Carolina Company says, "you vote my forty thousand shares and you vote it according to my direction." And we are told that that violates the constitution of Georgia. That is a great mistake. The amended constitution of Georgia, as my brother has distinctly and clearly and fully stated in the opinion from which he read—admirably stated, I may say places the prohibition upon the legislature from doing four things, neither of which it has done in this case. It is urged that the last clause in the constitutional provision, "all such contracts and agreements shall be illegal and void," applies. Did Georgia by her constitution undertake to pass upon the legality and validity of contracts made in Virginia, made in the State of New York? Certainly not. If she did, she exceeded her power and jurisdiction.

Well, what else is urged? It is said because the Terminal Company owned a majority of the stock in the Richmond and Danville Railroad Company, which it had a right to own, which it had a right to vote and use in the election of directors, and then the directors have the legal control or are the mouthpiece of the corporation—and that she has an interest, large or small, it does not matter, in the East Tennessee, Virginia and Georgia Railroad Company, which is not a controlling interest, but it does not matter if it was, and because the Terminal Company owns that stock in another corporation, that she cannot vote the stock she owns in the Central, or have it done through a trustee who is the common trustee of both herself and

the North Carolina corporation. Why? Why? The Terminal had a right to acquire that stock, had a right to own it and to vote it. But it is said it might lead, or may lead, or was intended to lead, to a condition that would prevent competition. How so? How so?

Is there any competition in point of fact between the Central Railroad and Banking Company and the Georgia Pacific leading out to the Northwest from Atlanta—that is, the lessee. What competition in the eye of the law? I can suggest to you, gentlemen, a case that would have fallen within the constitution of Georgia, perhaps. If the East Tennessee, Virginia and Georgia Railroad Company, running a line from Atlanta to the coast, parallel to the Central Railroad Company, had as a corporation—had as a corporation—I emphasize that, had as a corporation undertaken to buy up the stock of the Central Railroad Company you would then have had a case coming within the purview and principle of the constitution of Georgia. But they say because a stockholder in two corporations had stock in two corporations that that stockholder cannot vote in both corporations. It is an anomaly beyond expression to my mind. But it does not come within any inhibition of the constitution of Georgia. When those contracts are purchased, personal properties are made beyond the jurisdiction of Georgia. To say that is illegal by Georgia law cannot be sustained.

For Georgia law cannot reach the transaction, Georgia law cannot deal with those stocks and inhibit their purchase and their sale, and the only question in this case that ever would have given trouble would have been the power of that corporation, the Terminal Company and the North Carolina Company to have held and owned such stock, but they each had the power of the sovereigns that created them to purchase, abide and hold these stocks, and there is nothing in the constitution of Georgia or in its laws

to deny them their rights and interests as such holders in this property. That is my judgment of the law of this case. A judgment will be rendered in accordance therewith, dismissing and dissolving the injunction that restrained the voting of that stock, and dismissing Rowena Clarke's bill at her cost, except so much of the cost therein as accrued up to the time of these corporations entering their appearances and disclaiming the lease.

WASHINGTON STATE *v.* NORTHERN SECURITIES COMPANY.

ORIGINAL.

Argued April 14, 1902.—Decided April 21, 1902.

In the exercise of original jurisdiction by this court the usual practice in equity cases is to hear applications for leave to file bills, *ex parte*, and, ordinarily, leave is granted as of course.

But this is not an invariable rule, and where it is apparent on the face of the proposed bill that there is a defect of parties, which cannot be supplied without ousting the jurisdiction, leave will be denied.

Where the objection is one of jurisdiction over the subject-matter, and the case is of grave importance, leave to file will be granted that the fullest argument may be had.

THE case is stated in the opinion of the court.

Mr. W. B. Stratton for the motion. *Mr. Wallace B. Douglas* was on his brief.

Mr. C. W. Bunn and *Mr. John W. Griggs* opposing. *Mr. George B. Young* and *Mr. M. D. Grover* were on Mr. Bunn's brief.

THE CHIEF JUSTICE:

This is an application by the State of Washington for leave

to file an original bill in this court against the Northern Securities Company, a corporation of New Jersey; the Great Northern Railway Company, a corporation of Minnesota; and the Northern Pacific Railway Company, a corporation of Wisconsin. Notice was given to the proposed defendants and argument had in support of and against the motion.

The usual practice in equity cases has been to hear such applications *ex parte*, *Georgia* v. *Grant*, 6 Wall. 241; although under special circumstances a different course has been pursued. *Mississippi* v. *Johnson*, 4 Wall. 475. Ordinarily, as stated by the Chief Justice in the latter case, the motion for leave to file is granted as matter of course. 4 Wall. 478.

In *Georgia* v. *Stanton*, 6 Wall. 50, a bill in equity was filed by the State of Georgia to enjoin the Secretary of War and other officers representing the Executive authority from carrying into execution certain acts of Congress, on the ground that such execution would overthrow the existing state government of the State and establish another and different one in its place; and a motion was made to dismiss for want of jurisdiction over the parties and over the subject-matter, on which full argument was had. It was held that the bill called for the judgment of the court on political grounds and on rights of a political character, and that, therefore, the court had no jurisdiction over the subject-matter.

In *Louisiana* v. *Texas*, 176 U. S. 1, the case stated shows that "argument was had on objections to granting leave, but it appearing to the court the better course in this instance, leave was granted, and the bill filed, whereupon defendants demurred, and the cause was submitted on the oral argument already had and printed briefs."

In *Minnesota* v. *Northern Securities Company*, decided at this term, 184 U. S. 199, application to file a similar bill to that before us, and seeking similar relief, was made, and after examining the bill we directed notice to be given and heard argument on both sides. The result was that leave to file was denied because of the want of certain indispensable parties, who could not be brought in without defeating our constitutional jurisdiction. That insuperable difficulty does not meet us on

the threshold here, but, among other objections to granting leave, it is urged that the court would have no jurisdiction over the subject-matter because, as contended, the bill does not present the case of a controversy of a civil nature, which is justiciable under the Constitution and laws of the United States, in that the suit is purely a suit for the enforcement of "the local law and policy of a sovereign and independent State, whose right to make laws and to enforce them exists only within itself and by means of its own agencies, and is limited to its own territory."

In the exercise of original jurisdiction the court has always necessarily proceeded with the utmost care and deliberation, and, in respect of all contested questions, on the fullest argument; and in the matter of practice we are obliged to bear in mind, in an especial degree, the effect of every step taken in the instant case on those which may succeed it. In view of this it seems to us advisable to take the same course on the pending application as was pursued in *Louisiana* v. *Texas*, that is, without intimating any opinion whatever on the questions suggested, to grant leave to file in accordance with the usual practice. Our rules require service sixty days before the return day of process, but as the final adjournment of the term will have taken place within that time, process will be made returnable on the first day of next term.

Leave is granted and process will issue accordingly.